TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 160

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

HENRY A. GARDNER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED NOVEMBER 21, 1896.

(17,192.)

(17,192.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 607.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

HENRY A. GARDNER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	4	2
Proof of service of citation	5	2
Petition to chief justice of Minnesota for writ of error	6	2
Refusal of chief justice of Minnesota to allow writ of error	7	3
Petition to Supreme Court of the United States for writ of error	8	4
Allowance of writ of error by Justice Brewer	11	5
Assignment of errors	12	5
Assignment of errors	15	8
Bond on writ of error	17	9
Appearance for plaintiff in error	20	11
Transcript from district court	21	12
Amended complaint	21	12
Exhibit A—Agreement between M. & St. L. R'y Co., M. & D. R. R. Co., M. & I. S. R. R. Co., and Ft. D. & Ft. R. Co., April 20, 1881	47	25
Answer of M. & St. L. R. Co.	66	35
William Strauss *et al.*	80	42

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 9, 1899.

	Original.	Print.
Amended answer of William Strauss *et al*	85	45
Reply to answer of M. & St. L. R'y Co	87	[illegible]
Reply to answer of William Strauss *et al*	98	51
Stipulation of facts	102	53
Exhibit B—Order appointing receiver in the Seibert case	120	62
Additional stipulation of facts	123	64
Exhibits offered in evidence	125	65
Exhibit 1—Agreement under which Minneapolis and Duluth railroad was constructed	125	65
2—Articles of agreement and association of Minneapolis and Duluth R. R. Co	129	67
3—Articles of incorporation of Minneapolis and Iowa Southern R. R. Co	140	73
4—Articles of incorporation of Fort Dodge and Fort Ridgely R. R. & Tel. Co	144	75
Stipulation for submission	153	80
Findings of fact	156	82
Conclusions of law	172	90
Notice of motion to settle bill of exceptions	173	90
Notice of motion for new trial	173	91
Statement as to settled case	174	91
Order denying motion for new trial	174	91
Judgment	175	92
Notice of appeal	176	92
Syllabus	178	93
Opinion	179	93
Judgment	190	99
Order for judgment	192	100
Order submitting cause	194	101
Clerk's certificate	197	101
Stipulation to correct transcript of record, &c	199	103

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Henry A. Gardner, plaintiff, and The Minneapolis & St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

2

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

3 [Endorsed:] State of Minnesota, supreme court, *ss:* I hereby certify that this writ of error was duly served this 26th day

of October, 1898, and that a true copy thereof was delivered to and lodged with the undersigned clerk of said court on said day. D. F. Reese, clerk of the supreme court of Minnesota, by J. L. Helm, deputy.

4 UNITED STATES OF AMERICA, *ss:*

To Henry A. Gardner, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein The Minneapolis & St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 21st day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

5 On this 26th day of October, in the year of our Lord one thousand eight hundred and ninety-eight, personally appeared J. J. Harper before me, the subscriber, a deputy clerk of the supreme court, and makes oath that he delivered a true copy of the within citation to F. W. M. Cutcheon, attorney for Henry A. Gardner, defendant in error named in this citation, at St. Paul, Minnesota, on this 26th day of October, 1898.

J. J. HARPER.

Sworn to and subscribed the 26 day of October, A. D. 1898.

[Seal of the Supreme Court, State of Minnesota.]

J. L. HELM,
Deputy Clerk of Supreme Court.

6 To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

Now come the Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. P. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, all citizens of the United States of America, by their attorney, Albert E. Clarke, and complain that in the records and proceedings, and also in the rendition of the judg-

ment, in a suit between Henry A. Gardner, plaintiff, and the said Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. P. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, defendants, in the supreme court of the State of Minnesota, that being the highest court of law or equity in said State of Minnesota in which a decision could be had in said suit, and in which a final judgment was rendered against said defendants on the 26th day of August, A. D. 1898, in said suit, wherein it was adjudged that section three (3), article ten (10), of the constitution of the State of Minnesota, which declares that each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him, did not impair the obligation of the charter of said Minneapolis and St. Louis Railway Company and did not impair the contract between the Territory and State of Minnesota, on one part, and said railway company and its stockholders, on the other part, as evidenced by and embodied in the charter of said railway company granted by the Territory of Minnesota by an act of the Legislative Assembly of said Territory of Minnesota approved March 3, 1853 (the same being chapter 66 of the Special Laws of 1853), and the various and several acts of the legislatures of the Territory and State of Minnesota amendatory thereto, including that special act of the legislature of the State of Minnesota approved March 2d, 1881 (being chapter 118 of the Special Laws of 1881), contrary to the special laws, of section ten (10), article one (1), of the Constitution of the United States, which prohibits any State from passing any law impairing the obligations of contracts.

It was also adjudged by said supreme court, by its final
7 judgment in said suit, that said section three (3), article ten (10), of the constitution of the State of Minnesota did not abridge the privileges or immunities of said defendants, nor deny to said defendants the equal protection of the laws, nor deprive said defendants of their property without due compensation or due process of law, contrary to the provisions of the fourteenth (14th) amendment of the Constitution of the United States, all of which appears in the records and pleadings in said suit, whereby manifest error has happened, to the great damage of said defendants.

Wherefore the said defendants pray for the allowance of an writ of error, and for such other process as may cause the same to be corrected by the Supreme Court of the United States.

ALBERT E. CLARKE,

Attorney for Minneapolis & St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. P. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Defendants.

Being of the opinion that no Federal question is presented by the record, I decline to allow the writ.

CHAS. M. START,

Chief Justice of the Supreme Court of the State of Minnesota.

[Endorsed:] Original. State of Minnesota, county of ——, supreme court, — judicial district. Henry A. Gar-ner, plaintiff, *vs.* Minneapolis & St. Louis Railway Company *et al.*, defendant-. Petition for writ of error to sup. ct. of Minn. Due service of the within by copy is hereby admitted at ——, Minnesota, this — day of ——, A. D. 189-. —— ——, attorney for ——; Albert E. Clarke and W. F. Booth, 1104 Guaranty Loan building, Minneapolis, Minn., attorneys for ——.

8 To the honorable Supreme Court of the United States of America:

Now come the Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, all citizens of the United States of America, by their attorney, Albert E. Clarke, and complain that in the records and proceedings, and also in the rendition of the judgment, in a suit between Henry A. Gardner, plaintiff, and the said Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, defendants, in the supreme court of the State of Minnesota, that being the highest court of law or equity in said State of Minnesota in which a decision could be had in said suit, and in which a final judgment was rendered against said defendants on the 26th day of August, A. D. 1898, in said suit, wherein it was adjudged that section three (3) of article ten (10) of the constitution of the State of Minnesota, which declares that each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him, did not impair the obligation of the charter of said Minneapolis and St. Louis Railway Company, and did not impair the contract between the Territory and State of Minnesota, on one part, and said railway company and its stockholders, on the other part, as evidenced by and embodied in the charter of said railway company granted by the Territory of Minnesota by an act of the Legislative Assembly of said Territory of Minnesota approved March 3, 1853 (the same being chapter 66 of the Special Laws of 1853), and the various and several acts of the legislature of the Territory and State of Minnesota amendatory thereto, including that special act of the legistature of the State of Minnesota approved March 2d, 1881 (being chapter 113 of the Special Laws of 1881), contrary to the special laws, of section ten (10), article — (1), of the Constitution of the United States, which prohibits any State from passing any law impairing the obligations of contracts.

It was also adjudged by said supreme court, by its final judgment in said suit, that said section three (3), article ten (10), of the
9 constitution of the State of Minnesota did not abridge the privileges or immunities of said defendants, nor deny to said defendants the equal protection of the laws, nor deprive said de-

fendants of their property without due compensation or due process of law, contrary to the provisions of the fourteenth (14th) amendment of the Constitution of the United States, all of which appears in the records and pleadings in said suit, whereby manifest error has happened, to the great damage of said defendants.

The supreme court of the State of Minnesota and its chief justice, the Honorable Charles M. Start, refused to allow a writ of error, said court and said chief justice being of the opinion that no Federal question is presented by the record.

Wherefore the said defendants pray for the allowance of a writ of error, and for such other process as may cause the same to be corrected by the Supreme Court of the United States.

ALBERT E. CLARKE,
Attorney for Minneapolis & St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Defendants.

WILLIAM STRAUSS,
DUDLEY & MICHENER,
Of Counsel.

10 DISTRICT OF COLUMBIA, *ss:*

William Strauss, of lawful age, being duly sworn according to law, deposes and says that he is one of the defendants in the case described in the foregoing petition or application, which he has read and understands, and that the matters of fact therein set forth are true, as he is informed and believes.

WILLIAM STRAUSS.

Subscribed and sworn to before me, a notary public in and for the District aforesaid, on this twelfth day of October, A. D. 1898.

[Seal of L. P. Squier, Notary Public, District of Columbia.]

L. P. SQUIER,
Notary Public.

11 [Endorsed:] In the Supreme Court of United States of America. Henry A. Gardner, plaintiff, *vs.* Minneapolis and St. Louis Railway Company *et al.*, defendants. Petition for writ of error. Oct. 14th, '98 Let writ issue. D. J. Brewer, justice.

12 *Assignment of Errors Made and Filed by Defendant and Appellant in the State Supreme Court.*

I. The court erred in holding that the defendant railway company was not created and organized under and by chapter 66, Laws of 1853, Territory of Minnesota.

II. The court erred in holding that the rights, franchises, privileges, and immunities granted by chapter 66, Laws of 1853, Terri-

tory of Minnesota, to the Minnesota Western Railroad Company did not vest prior to the adoption of the State constitution of the State of Minnesota.

III. The court erred in holding that the charter of the Minnesota Western Railroad Company, afterward called the Minneapolis & St. Louis Railway Company, was ever amended so as to impose a double liability on the stockholders of said company, either by constitutional enactment or ancilliary legislation, during the period throughout which said charter was subject to amendment.

IV. The court erred in holding that the double liability ever attached to the stock of any one of the four corporations which entered into the consolidation agreement of 1881.

V. The court erred in holding that section 3, article 10, of the State constitution, which imposes a double liability on the stockholders of corporations other than manufacturing and mechanical corporations, applies to corporations created before the adoption of said constitution.

VI. The court erred in holding that section 3, article 10, State constitution, imposing a double liability on the stockholders of corporations other than manufacturing and mechanical corporations, ever applied to the Minnesota Western Railroad Company, or to the defendant railway company, or to the Minneapolis & Duluth Railroad Company.

VII. The court erred in holding that section 3, article 10, of the State constitution, if applied to the defendant railway company, did not violate section 10, article 1, of the Constitution of the United States, in that the provisions of said section 3, article 10, impaired the obligation of the charter contract contained in said chap-
13 ter 66, Laws of 1853, Territory of Minnesota.

VIII. The court erred in holding that section 3, article 10, of the State constitution, if applied to the defendant railway company, is not in violation of the 14th amendment of the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said section 3, article 10, assumed to impair and destroy rights theretofore vested in said defendants.

IX. The court erred in holding that section 3, article 10, of the State constitution, if applied to the defendant railway company, is not in violation of the 14th amendment to the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said section 3, article 10, assumes to abridge the privileges and immunities of the defendants as citizens and to deny to defendants the equal protection of the laws, and to deprive them of their property without due compensation or due process of law.

X. The court erred in holding that it was the intent of the framers of the State constitution or of the people in adopting said constitution that said section 3, article 10, should apply to corporations already created, organized, and existing at the time of the adoption of the State constitution.

XI. The court erred in holding that the defendant railway company was not created, organized, and existing until the passage of chapter 113, Special Laws 1881, of the State of Minnesota.

XII. The court erred in holding that the legislature intended by the passage of chapter 113, Special Laws 1881, of the State of Minnesota, to create a new corporation, and that said chapter 113, Special Laws 1881, did in fact create a new corporation.

XIII. The court erred in holding that by the passage of chapter 113, Special Laws 1881, the legislature intended to abridge or modify or repeal, and that said law did in fact abridge, modify, or repeal, any of the rights, privileges, or immunities theretofore possessed by the corporation theretofore known as the Minneapolis & St. Louis Railway Company.

XIV. The court erred in holding that if, under chapter 113, Special Laws of 1881, there was in fact created a new corporate entity, such new corporate entity did not possess all the rights, privileges, and immunities, including exemption from double liability upon its stock, originally possessed by the corporation created under chapter 66, Laws of 1853, Territory of Minnesota, and also possessed by the other corporations entering into said consolidation agreement.

14

STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify that the above and foregoing assignment of errors was made and filed by the defendants and appellants in the above-entitled action of Henry A. Gardner, respondent, *vs.* Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Frederick B. Olcott, Richard B. Hartshorne, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, appellants. Said assignment of errors was filed in said supreme court on the 11th day of June, 1898, in accordance with the rules and practice of said court, and became and constituted a part of the record upon which said cause was heard, tried, and determined, and upon which the same was argued and submitted in said court.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Minnesota, at the capital, St. Paul, Minnesota, this 18th day of November, 1898.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court of Minnesota,
By J. L. HELM, *Deputy.*

[Endorsed:] 11199. State of Minnesota, county of ——. Supreme court, — judicial district. Henry A. Gardner, respondent, *vs.* Mpls. & St. Louis Railway Co. *et al.*, appellants. Assignment of errors.

Endorsed: "Filed Nov. 18, 1898. D. F. Reese, clerk."

15 In the Supreme Court of the United States.

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, WILLIAM L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. P. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Plaintiffs in Error,

vs.

HENRY A. GARDNER, Defendant in Error.

Assignment of Errors.

The plaintiffs in error respectfully submit that the supreme court of Minnesota erred in this:

I.

The court erred in holding that section 3 of article 10 of the constitution of the State of Minnesota, which provides that "each stockholder in any corporation (except those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him," is valid, and imposes a personal liability for corporate debts upon the individual plaintiffs in error as stockholders of the corporation plaintiff in error, and that such constitutional provision does not impair the obligation of the contract between the State of Minnesota and the plaintiffs in error embodied in and evidenced by the special act of the Legislative Assembly of the Territory of Minnesota approved March 3d, 1853, entitled "An act to incorporate the Minnesota Western Railroad Company," the benefits of which act were vested, continued, and perpetuated in the plaintiffs in error by the special act of the legislature of the State of Minnesota approved March 2d, 1881, entitled "An act to amend an act entitled An act to amend an act entitled 'An act to incorporate the Minnesota Western Railroad Company,' approved March 3d, 1853, and the acts amendatory thereof, approved February 4th, 1870," and is not in conflict
16 with the provisions of section 10, article 1, of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

II.

The court erred in holding that section 3 of article 10 of the constitution of the State of Minnesota is not violative of the 14th amendment to the Constitution of the United States, in that the State of Minnesota by the provisions of said section 3 assumes to impair and destroy rights vested in the plaintiffs in error by the special act of the Legislative Assembly of the Territory of Minnesota approved March 3d, 1853, entitled "An act to incorporate the Minnesota Western Railroad Company," and by the special act of the legislature of the State of Minnesota approved March 2d, 1881, entitled "An act to amend an act entitled An act to amend an act entitled 'An act to incorporate the Minnesota Western Railroad Company,' approved March 3d, 1853, and the act amendatory thereof, approved February 4th, 1870."

III.

The court erred in holding that the enforcement against the plaintiffs in error of the provisions of section 3, article 10, of the constitution of the State of Minnesota, which declares that each stockholder in any corporation shall be liable to the amount of stock held or owned by him, is not in violation of section 10, article 1, of the Constitution of the United States, in that it impairs the obligation of the contract between the State and the plaintiffs in error, which is embodied in and evidenced by the act of the legislature of the State of Minnesota approved March 2d, 1881, the same being and constituting chapter 113 of the Special Laws of Minnesota enacted in the year 1881.

IV.

The court erred in holding that the contract of consolidation between the Minneapolis and St. Louis Railway Company, the Minnesota and Iowa Southern Railroad Company, the Minneapolis & Duluth Railroad Company, and Fort Dodge & Fort Ridgely Railroad Company, pursuant to chapter 113 of the Special Laws of 1881, approved March 2d, 1881, created a new corporation.

[Endorsed:] In the United States Supreme Court. Minneapolis & St. Louis Railway Co., pl'ffs in error, *vs.* Henry A. Gardner, def't in error. Assignment of errors. Albert E. Clarke, counsel for pl'ffs in error, Minneapolis, Minnesota.
Endorsed: "Filed Nov. 18, 1898. D. F. Reese, clerk."

17 In the Supreme Court of the United States.

HENRY A. GARDNER, Plaintiff,
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, WILLIAM L. BULL, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Defendants.

Know all men by these presents that we, The Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, as principals, and National Surety Company, a New York corporation, as surety, are held and firmly bound unto Henry A. Gardner in the full and just sum of twenty thousand dollars ($20,000), to be paid to said Henry A. Gardner, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of October, A. D. 1898.

Whereas lately, at a session of the supreme court of the State of Minnesota, in a suit pending in said court between said Henry A. Gardner, plaintiff, and said Minneapolis & St. Louis Railway Com-

pany, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, as defendants, a final judgment was rendered against the said defendants, and the said defendants having obtained a writ of error from the Supreme Court of the United States and filed a copy thereof in the clerk's office of said court to reverse said judgment in the aforesaid suit, and a citation to said Henry A. Gardner, citing and admonishing him to be and appear before the Supreme Court of the United States, to be holden at Washington, on the 21st day of November, 1898:

Now, the condition of the above obligation is such that if
18 the said Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn shall prosecute said writ of error to effect and answer all costs and damages and fully pay to said Henry A. Gardner, his heirs, executors, or administrators, the full amount of said judgment of said supreme court of the State of Minnesota if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY,
WILLIAM L. BULL,
AUGUST BELMONT,
EDWIN HAWLEY,
RICHARD B. HARTSHORNE,
F. B. OLCOTT,
W. A. READ,
WILLIAM STRAUSS,
J. KENNEDY TOD,
WILLIAM D. WASHBURN,
By ALBERT E. CLARKE, *Their Attorney.*
NATIONAL SURETY COMPANY,
By MAURICE AUERBACH, *Resident Vice-President.*

Attest:
[SEAL.] W. B. JOYCE,
Resident Ass't Secretary.

Signed, sealed, and delivered in presence of—
J. J. HARPER.
W. H. WILSON,
L. F. HOLCOMB.

Approved Oct. 21, 1898.
D. J. BREWER,
Associate Justice Sup. Ct. U. S.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 18th day of Oct., 1898, before me personally appeared William B. Joyce, resident assistant secretary of the National Surety

Company, the above-named corporation, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of St. Paul; that he is resident assistant secretary of said corporation, the National Surety Company; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal, that it was affixed by order of the board of directors of said corporation, and that he signed said instrument as resident assistant secretary of said corporation by like authority; and the said William B. Joyce further said that he is acquainted with Maurice Auerbach and knows him to be resident vice-president of said company; that the signature of said Maurice Auerbach subscribed to the said instrument is the genuine handwriting of the said Maurice Auerbach, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said William B. Joyce, resident assistant secretary, and the said William B. Joyce acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] L. F. HOLCOMBE,
Notary Public, Ramsey County, Minnesota.

19 It is hereby stipulated that the above and foregoing bond is in all matters and things sufficient, and is hereby accepted, and the same may be approved.

F. W. M. CUTCHEON,
Attorney for Henry A. Gardner, Plaintiff.
ALBERT E. CLARKE,
Attorney for Foregoing Defendants.

[Endorsed:] In the Supreme Court of the United States. Henry A. Gardner, pl'ff, *vs.* Minneapolis & St. Louis Railway Co. *et al.*, def't-. Bond. Due service of this bond by copy thereof is hereby admitted this 26th day of October, 1898. F. W. M. Cutcheon, att'y for defendant in error.

Endorsed: "Filed Nov. 18, 1898. D. F. Reese, clerk."

20 In the Supreme Court of the United States.

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, WILLIAM L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. P. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Plaintiffs in Error,

vs.

HENRY A. GARDNER, Defendant in Error.

The clerk will enter my appearance as counsel for the plaintiffs in error.

ALBERT E. CLARKE,
Minneapolis, Minn., 1104 *Guaranty Loan Bldg.*

[Endorsed:] In the Supreme Court of the United States. Minneapolis & St. Louis Railway Company *et al.*, pl'ffs in error, *vs.* Henry

A. Gardner, def't in error. Precipe. Albert E. Clarke, counsel for pl'ffs in error, Minneapolis, Minn.
Endorsed: "Filed Nov. 18, 1898. D. F. Reese, clerk."

21 & 22 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

District Court, Fourth Judicial District.

HENRY A. GARDNER, Plaintiff,
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, WILLIAM L. BULL, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Defendants.

Amended Complaint.

Now comes Henry A. Gardner, plaintiff above named, upon his own behalf, and upon behalf of all others in interest with him who shall become parties to this action, for this, his complaint, respectfully shows to this court and alleges:

I.

23 That the defendant, The Minneapolis & St. Louis Railway Company, is a domestic railroad corporation, located within this State; that during the year 1853, by an act of the legislature of the Territory of Minnesota, approved March 3, 1853, entitled "An act to incorporate the Minnesota Western Railroad Company," there was incorporated the Minnesota Western Railroad Company, which continued to exist and be known by said name until on or about the 26th day of May, A. D. 1870, on which day its board of directors by resolution duly adopted, and proceeding under the authority conferred by an act approved February 4th, 1870, amendatory of said original act, and entitled "An act to amend an act to incorporate the Minnesota Western Railroad Company," lawfully changed the name of said corporation to the Minneapolis & St. Louis Railway Company, by which name it was thereafter lawfully and commonly known; that on or about the 20th day of April, 1881, said corporation, proceeding under and in accordance with the provisions of another act of the legislature of the State of Minnesota, approved March 2, 1881, and entitled "An act to amend an act entitled 'An act to incorporate the Minnesota Western Railroad Company,' approved March third (3rd), one thousand eight hundred and fifty-three (1853), and the act amendatory thereof, approved February fourth (4th), one thousand eight hundred and seventy (1870)," did duly enter into an agreement with certain other corporations, to wit: the Minneapolis & Duluth Railroad

Company, the Minnesota & Iowa Southern Railroad Company, and the Fort Dodge & Fort Ridgley Railroad Company, by and under the terms of which all said corporations above mentioned
24 agreed to make a full and complete consolidation and amalgamation of all said corporations and their respective stocks, franchises, property, earnings and management, under the name of the Minneapolis & St. Louis Railway Company, which said agreement was to and did take effect June 1, 1881; that thereafter said companies filed their said articles of consolidation as provided by said act of the legislature of Minnesota of March 2, 1881, and by the laws of the State of Iowa, a copy of which said agreement and articles of consolidation is hereto attached, marked Exhibit "A" and made a part hereof; that thereafter, and on or about June 1, 1881, said consolidation was duly consummated, each of said constituent companies conveying and transferring unto said consolidated corporation all their respective stocks, franchises, rights, property and earnings; that thereafter said consolidated company entered upon, and ever after and until the 2d day of November, 1894, enjoyed all the franchises, rights, property and earnings of its said constituent corporations; that said consolidated corporation is the defendant corporation, The Minneapolis & St. Louis Railway Company above named.

II.

That said defendant corporation, The Minneapolis & St. Louis Railway Company, was invested by said acts above mentioned and the laws and statutes of said Territory and State of Minnesota, with the usual and general powers of a body corporate, and especially was empowered to construct, maintain, and operate a rail-
25 road with a single or double track from Stillwater, on Lake St. Croix, to the city of St. Anthony, on the Mississippi river, both in Minnesota, and thence across said river to the city of Minneapolis, in said State, to a convenient point of junction with the Mississippi Valley railroad or the Hastings & Dakota railroad, or both, besides eight branches.

III.

That said Minneapolis & St. Louis Railway Company did not, either under that name or its original name, to wit: the Minnesota Western Railroad Company, enter upon the prosecution of its corporate enterprise, either by constructing any railroad or by receiving subscriptions to its capital stock, or in any other way, until after the 6th day of March, 1869, but that on and prior to the 28th day of June, A. D. 1888, said defendant, The Minneapolis & St. Louis Railway Company, owned and operated a system of railroads in the States of Minnesota and Iowa, extending from Minneapolis through Hopkins, Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus in the State of Iowa, with a branch line from Hopkins, via Winthrop, Minnesota, to Morton, in said last-named State; that said railway company also owned a line of railway extending from Minneapolis to White Bear, in the State of Minnesota

which was leased to and operated by the St. Paul & Duluth Railroad Company.

IV.

26 That on said day last mentioned, said defendant railway company had executed or assumed nine (9) mortgages, securing bonds theretofore issued and varying in amount, which said mortgages were liens upon different portions of said lines of railway, and were as follows:

1. A mortgage executed by the Minneapolis & Duluth Railroad Company to the Fidelity Insurance, Trust and Safe Deposit Company, of Philadelphia, Pennsylvania, dated January 1st, 1877, securing outstanding bonds of the aggregate par value of two hundred and eighty thousand dollars ($280,000), together with interest thereon at the rate of seven (7) per cent. per annum, which said mortgage was and still is a lien upon that portion of the railway of said defendant railway company extending from Minneapolis to White Bear, in the State of Minnesota.

2. A mortgage executed by the Minneapolis & St. Louis Railway Company to said Fidelity Insurance, Trust and Safe Deposit Company, dated January 1st, 1877, and securing outstanding bonds of the aggregate par value of four hundred and forty-five thousand dollars ($445,000), together with interest thereon at the rate of seven (7) per cent. per annum, which said mortgage was and still is a lien upon that portion of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to Merriam junction, in said State of Minnesota.

3. Another mortgage executed by the Minneapolis & St. Louis Railway Company to the Farmers' Loan and Trust Company, of New York city, dated February 1st, 1877, and securing out-
27 standing bonds of the aggregate par value of one million, one hundred thousand dollars ($1,100,000), together with interest thereon at the rate of seven (7) per cent. *per cent.* per annum, which said mortgage was and still is a lien upon those portions of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to White Bear, and from Minneapolis, by way of Merriam junction, to Albert Lea, all in said State of Minnesota.

4. Another mortgage executed by the Minneapolis & St. Louis Railway Company to the Central Trust Company, of New York city, commonly called the Iowa Extension mortgage, bearing date June 21st, 1879, and securing outstanding bonds of the aggregate par value of one million and fifteen thousand dollars ($1,015,000), together with interest thereon at the rate of seven (7) per cent. per annum, which said mortgage was and still is a lien upon those portions of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to White Bear, in Minnesota, and from Minneapolis, via Merriam junction and Albert Lea, Minnesota, to Fort Dodge, Iowa.

5. Another mortgage executed by the Minneapolis & St. Louis Railway Company to the Central Trust Company, of New York city, commonly called the Southwestern Extension mortgage, dated

December 1st, 1880, and securing outstanding bonds of the aggregate par value of six hundred and thirty-six thousand dollars ($636,000), together with interest thereon at the rate of seven (7) per cent. per annum, which said mortgage was and still is a lien upon
28 those portions of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to White Bear, in Minnesota, and from Minneapolis, via *of* Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, Iowa.

6. Another mortgage executed by the Minneapolis & St. Louis Railway Company to said Central Trust Company, of New York city, commonly called the income mortgage, dated December 10th, 1880, securing outstanding bonds of the aggregate par value of five hundred thousand dollars ($500,000), together with interest thereon at the rate of seven (7) per cent. per annum, which said mortgage was and still is a lien upon those portions of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to White Bear, Minnesota, and from Minneapolis, via Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, Iowa.

7. Another mortgage executed by said defendant, The Minneapolis & St. Louis Railway Company, to the Central Trust Company, of New York city, commonly called the Pacific Extension mortgage, dated June 1st, 1881, securing outstanding bonds of the aggregate par value of one million, three hundred and eighty-two thousand dollars ($1,382,000), together with interest thereon at the rate of six (6) per cent. per annum, which said mortgage was and still is a lien upon those portions of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to Hopkins, Minnesota, and from Hopkins, Minnesota, to Morton, Minnesota.

8. Another mortgage executed by said defendant, The
29 Minneapolis & St. Louis Railway Company, to said Central Trust Company, of New York city, commonly called the consolidated mortgage, dated January 2d, 1882, securing outstanding bonds of the aggregate par value of one hundred and eight thousand dollars ($108,000), together with interest thereon at the rate of six (6) per cent. per annum, which said mortgage was and still is a lien upon those portions of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to White Bear, in Minnesota, and from Minneapolis, via Merriam junction, to Albert Lea, Minnesota, and from the southern boundary of the State of Minnesota, via Fort Dodge, Iowa, to Angus, Iowa, and from Hopkins, Minnesota, to Morton, Minnesota.

9. Another mortgage executed by said Minneapolis & St. Louis Railway Company to said Central Trust Company, of New York city, commonly called the improvement and equipment mortgage, dated October 12th, 1882, securing outstanding bonds of the aggregate par value of three million, eight hundred and eighty-seven thousand dollars ($3,887,000), together with interest thereon at the rate of six (6) per cent. per annum, which said mortgage was a lien upon those portions of the railway of said Minneapolis & St. Louis Railway Company extending from Minneapolis to White Bear, in

Minnesota, and from Minneapolis, via Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, Iowa, and from Hopkins to Winthrop, Minnesota, as well as upon all, or substantially all, the equipment and movable property of said defendant, The Minneapolis & St. Louis Railway Company.

That said last-mentioned mortgage did not in any way convey or cover, and was not in any way a lien upon, that portion of the railway of said Minneapolis & St. Louis Railway Company extending from Winthrop, Minnesota, to Morton, Minnesota.

That each of said mortgages was on said day, and (with the single exception of said improvement and equipment mortgage) still is, a lien upon the portion or portions of said railway covered by it superior in equity to the lien of any and every mortgage subsequent to it in date.

V.

That in addition to said mortgages above mentioned, there existed upon said 28th day of June, 1888, a number of contracts of various kinds, to wit: construction contracts, traffic agreements, trackage agreements, leases, etc., which upon said day, constituted liens upon the lines of said defendant, The Minneapolis & St. Louis Railway Company, superior in equity to the lien of said improvement and equipment mortgage above mentioned.

VI.

That prior to said 28th day of June, 1888, said Central Trust Company, of New York, was duly removed as trustee of the trust created by the mortgage above mentioned, known as the improvement and equipment mortgage, and Henry Seibert, of New York, was duly appointed trustee thereunder as its successor and in its place
31 and stead, and forthwith entered upon the discharge of the duties of said trust.

VII.

That on said 28th day of June, 1888, said Henry Seibert, as trustee under said improvement and equipment mortgage, duly commenced an action in this said court, wherein said Seibert, as such trustee, was plaintiff, and said defendant, The Minneapolis and St. Louis Railway Company, and others were defendants, for the purpose of foreclosing said improvement and equipment mortgage and of securing a sale in said action of all the franchises, rights, property and estates upon which the same was a lien or charge; that such proceedings were had in said action that thereafter, and on said 28th day of June, 1888, by an order of this said court, entered in said action, a receiver was appointed in aid of such foreclosure of all the property, railway, franchises, rights and estates of said defendant, The Minneapolis & St. Louis Railway Company, which said receiver forthwith qualified and thereupon took possession of all said property, railway, franchises, rights and estates of said railway company, and thereafter continued to hold and operate the same until the 2nd day of November, A. D. 1894, as hereinafter stated.

VIII.

That thereafter such proceedings were had in said foreclosure action that on the 29th day of June, 1893, an interlocutory decree was entered in said action whereby it was ordered and de-
32 creed that said improvement and equipment mortgage be foreclosed, and that all the property, railway, franchises, rights and estates, upon which said improvement and equipment mortgage was then a lien, should be sold at judicial sale, at the time and in the manner therein provided, in case no redemption thereof should be made as therein provided; that no redemption of said property, railway, franchises, rights or estates having been made as in said decree provided, all said property, railway, rights, franchises and estates upon which said improvement and equipment mortgage was a lien or charge were, under and in accordance with the provisions of said interlocutory decree, offered for sale upon the 11th day of October, 1894, and then and there sold by the sheriff of Hennepin county, Minnesota, to F. P. Olcott, as chairman of a committee organized to purchase said property, and thereupon a certificate of such sale was duly executed and delivered by said sheriff to said Olcott, as such chairman; that thereafter and upon the 31st day of October, 1894, said sale was duly confirmed by this said court, and a final decree duly entered in said foreclosure action, adjudging the title to the railway, property, franchises, rights and estates so sold to be in the assignees (hereinafter mentioned) of said Olcott, purchaser at said foreclosure sale.

IX.

That said interlocutory decree did not order that portion of the railway of said defendant, The Minneapolis & St. Louis Railway Company, extending from Winthrop to Morton, in the State
33 of Minnesota, to be sold in said foreclosure action, nor was the same advertised to be sold or offered to be sold, or in fact sold therein, nor covered by or included or mentioned in said interlocutory decree, or the notice of sale given thereunder, or the sheriff's said certificate of sale, or said final decree; but that it was adjudged in said interlocutory decree only that said improvement and equipment mortgage was a lien upon that portion of the line of railway of said Minneapolis & St. Louis Railway Company extending from Hopkins to Morton, that lies between Hopkins and Winthrop, and, in said final decree, it was adjudged only that the title to the same portion of said line was in said assignees of said Olcott; that said improvement and equipment mortgage has never been foreclosed upon or as against that portion of the lines of said Minneapolis & St. Louis Railway Company lying between Winthrop and Morton, in Minnesota; that in said foreclosure action all amounts due upon any and all the bonds and coupons secured by said improvement and equipment mortgage, and all indebtedness secured thereby, were fully paid and satisfied, and that said mortgage was and is fully paid and satisfied, and is no longer a lien, either in law or equity, upon any part of the property or estate now

or formerly belonging to said Minneapolis & St. Louis Railway Company.

X.

That immediately after said foreclosure sale said F. P. Olcott, as chairman of said committee of purchasers, sold and assigned
34 to divers persons said certificate of sale and all right, title and interest thereunder or by virtue of said sale arising, and his said assignees, pursuant to the statutes of the State of Minnesota in such case provided, did on or about the 2nd day of November, 1894, organize and incorporate a railway company called the Minneapolis & St. Louis Railroad Company, which said The Minneapolis & St. Louis Railroad Company thereupon, as successor of said Minneapolis & St. Louis Railway Company, became invested with all the property, railway, franchises, rights, privileges, immunities and estates embraced in said improvement and equipment mortgage and sold as aforesaid, and as such successor to said Minneapolis & St. Louis Railway Company, entered into and has ever since remained in possession of, operating and enjoying all said property, rights, franchises and estates, the receiver appointed in said action then and there (that is, on or about the said 2nd day of November, 1894), delivering all of the same unto said The Minneapolis & St. Louis Railroad Company upon said 2nd day of November, A. D. 1894.

XI.

That at the same time that said receiver delivered said property and rights above mentioned and sold as aforesaid unto said The Minneapolis & St. Louis Railroad Company, said receiver also delivered unto said railroad company, and said railroad company entered into possession of, and has ever since held, operated and enjoyed, that portion of the line of railway of said defendant,
35 The Minneapolis and St. Louis Railway Company extending from Winthrop to Morton, in the State of Minnesota; that plaintiff is informed and believes that no conveyance of said portion of said railway extending from Winthrop to Morton, as aforesaid, or of any interests therein, has ever been made to said The Minneapolis & St. Louis Railroad Company, but that said railroad company is now, and ever since said 2nd day of November, 1894, has been wrongfully in possession of and enjoying that portion of said railway under claim of title to the same by virtue of said foreclosure sale, made as above stated in said foreclosure action above mentioned, and under no other title or claim of title; that said receiver of said Minneapolis & St. Louis Railway Company no longer has any portion of the railway, property, franchises, rights of estates of said defendant, The Minneapolis & St. Louis Railway Company, in his hands, but only, if anything, a portion of the avails thereof, realized upon said foreclosure sale and held by him subject to distribution in accordance with the directions contained in said interlocutory decree of sale; that said receiver has, so far as the custody, care or control of any part of the estate of said Minneapolis & St.

Louis Railway Company is concerned, entirely discharged his trust, and is no longer entitled to take or hold any part of said estate.

XII.

Plaintiff is informed and believes, and so alleges, that ever since said 2nd day of November, 1894, the operation of said portion of said railway extending from Winthrop to Morton, in said
36 State of Minnesota, as aforesaid, has been profitable, and has produced in excess of the cost of operating the same and of the reasonable rental upon the equipment used thereabout, and in excess of that portion of the interest upon the bonded indebtedness secured by the existing mortgages upon said portion of said railway properly apportionable to said portion of said railway, as income, a considerable sum of money; and plaintiff alleges that the operation of said portion of said railway will, in all probability, continue permanently to produce an income in excess of such operating expense, rental and interest.

XIII.

That on the 27th day of December, A. D. 1887, Revilo F. Parshall, in an action then pending in the circuit court of the United States for the district of Minnesota, said court then and there having jurisdiction of all the parties, and of the subject-matter of said action, wherein said Revilo F. Parshall was plaintiff and said defendant herein, Minneapolis & St. Louis Railway Company, was defendant, recovered a judgment against said defendant, Minneapolis & St. Louis Railway Company, for the sum of eight thousand seven hundred and nineteen dollars and ten cents ($8,719.10), which said judgment was then and there duly entered in said action; that upon said 27th day of December, 1887, said judgment was duly docketed in the office of the clerk of said circuit court of the United States for the district of Minnesota, and then and there became a lien upon all the estates, real and personal, legal and equitable of
37 said defendant, Minneapolis & St. Louis Railway Company, within said district of Minnesota, which said judgment is wholly unpaid, and has ever since remained and now is a lien and charge upon all the estates, rights and property of said defendant, Minneapolis & St. Louis Railway Company, situate in said district of Minnesota; that said judgment so entered in said action, and described as aforesaid, has not been in any way reversed, modified or superceded, and that there is no appeal or writ of error or other proceeding pending upon which said judgment can be reviewed, but that said judgment is still in full force and effect.

XIV.

That after the rendition, entry and docketing of said judgment against said defendant, Minneapolis & St. Louis Railway Company, and after the same had become a lien and charge upon the estates and property of said defendant, Minneapolis & St. Louis Railway Company, as aforesaid, the president, attorneys and other officers of

said defendant, well knowing the insolvency of said corporation, anticipating the beginning of an action by the trustee under said improvement and equipment mortgage, to foreclose said mortgage, and anticipating the appointment of a receiver in said action for all the property and estates of said Minneapolis & St. Louis Railway Company in aid of such foreclosure, secured a stay of proceedings and of execution in said action wherein said Parshall was plaintiff and said railway company was defendant, for the
38 alleged purpose of providing time within which to have settled a bill of exceptions therein and to make a motion therein for a new trial of said action, and that said president, attorneys and other officers of said railway company did secure such stay of proceedings and execution, and delayed said action until after the commencement of the foreclosure action anticipated and begun as aforesaid, and the appointment of a receiver therein, so that when said stay of proceedings was vacated by the order of said United States circuit court, as it was thereafter vacated, it was impossible, and has ever since been impossible, to enforce said judgment or execution upon it or to realize thereupon, for the reason that all the property of said defendant corporation upon which execution could be levied was at the time of the vacation of said stay, and ever since has been in the custody or pretended custody of said receiver, or in the hands of the Minneapolis & St. Louis Railroad Company which had bought the same at foreclosure sale thereof, as aforesaid, and while the same still remained in the custody of said receiver.

XV.

That after the entry of said judgment in favor of said Parshall, and before the filing of this complaint, a writ of execution in due form of law, out of and under the seal of said United States circuit court for the district of Minnesota, subscribed by the clerk of said court, and attested in the name of the Chief Justice of the Supreme Court of the United States, duly endorsed, directed and delivered to the United States marshal for said
39 district of Minnesota, wherein said defendant, Minneapolis & St. Louis Railway Company, then had and yet has property or rights and an office, and still legally has its principal place of business, was duly issued against the property of said defendant, Minneapolis & St. Louis Railway Company, and thereafter, and before the filing of this complaint, and on or about the 5th day of October, A. D. 1892, was returned into said court wholly unsatisfied, and said judgment does yet remain and is wholly unsatisfied and unpaid; that there is now due and owing upon said judgment said sum of eight thousand seven hundred and nineteen dollars and ten cents ($8,719.10), with interest from the 27th day of December, 1887, in the aggregate not less than the sum of thirteen thousand five hundred dollars ($13,500).

XVI.

That on or about the 1st day of October, 1892, said Revilo F. Parshall duly sold said judgment, together with any and all sum

or sums of money or other benefit or advantage that might be had or obtained by reason of the same, unto this plaintiff, Henry A. Gardner, and then and there duly executed and delivered unto plaintiff an assignment of said judgment duly signed, sealed and acknowledged in accordance with law, which said assignment of judgment was heretofore, and on the 18th day of October, 1895, duly filed in the office of the clerk of said United States circuit court for the district of Minnesota; that plaintiff is, and ever since said 1st day of October, 1892, has been, the owner of and entitled to said
40 judgment and all benefit or advantage to be had or obtained by reason thereof, and to enforce the same by execution or otherwise, and to prosecute any and all legal proceedings upon said judgment, and to give good and sufficient releases and discharges as fully as might have been done by said Revilo F. Parshall while said Parshall owned and held said judgment.

XVII.

That said Minneapolis & St. Louis Railway Company is wholly insolvent, and save said portion of said railway extending from Winthrop to Morton as aforesaid, has not, and since said foreclosure sale has not had, any property whatsoever, and has not, and since said 28th day of June, 1888, has not had, any money out of which to satisfy the judgment of plaintiff in whole or in part.

XVIII.

That said portion of said railway extending from Winthrop to Morton, aforesaid, consists of road-bed, rails, yards, station grounds, station-houses, bridges, culverts and such other lands and structures only as constitute a part of the corpus of the railway of said Minneapolis & St. Louis Railway Company, and that the same and all thereof are necessary in the operation of said railway.

XIX.

That said Pacific Extension mortgage and said consolidated mortgage are still liens upon said portion of said railway, and that
41 said mortgages still secure respectively all the bonds secured by them upon said 28th day of June, 1888, and that, in consequence, any sale of said portion of said railway upon execution, if the same could be had, would be ineffectual, inasmuch as only a nominal sum could be realized upon such sale.

XX.

That since the entry of plaintiff's said judgment as aforesaid, each of a large number of persons, copartnerships and corporations, has held shares of the capital stock of said defendant, The Minneapolis & St. Louis Railway Company, and that each of a large number of persons, copartnerships and corporations now hold shares of such capital stock; that the names of many of such shareholders are to this plaintiff unknown, and that plaintiff has no

knowledge or information as to the number of shares held by any one of the persons, copartnerships or corporations that have been or are such shareholders respectively, save as hereinafter stated.

XXI.

That among such shareholders are the following defendants above named: William L. Bull, August Belmont, Edwin Hawley, Frederick P. Olcott, Richard B. Hartshorne, William A. Read, J. Kennedy Tod and William Strauss, and that said William L. Bull, August Belmont, Frederick P. Olcott, Richard B. Hartshorne, William A. Read, J. Kennedy Tod, William Strauss and William D. Washburn are now, and each of them is now, a shareholder in said defendant, The Minneapolis & St. Louis Railway Company.

42

XXII.

That in addition to said shareholders above named, there are other persons, copartnerships and corporations to plaintiff unknown, who have been since the entry of plaintiff's said judgment, and others likewise unknown, who are now shareholders in said defendant, The Minneapolis & St. Louis Railway Company.

XXIII.

That plaintiff is informed and believes, and so alleges, that said individual defendants above named now hold at least the number of shares in said defendant, The Minneapolis & St. Louis Railway Company, next hereinafter set opposite their names, respectively, which said shares are of the par value of one hundred dollars ($100) each:

William L. Bull	200	shares.
August Belmont	100	"
Edwin Hawley	2,100	"
Richard B. Hartshorne	100	"
F. P. Olcott	10,623	"
W. A. Read	4,720	"
William Strauss	2,200	"
J. Kennedy Tod	2,900	"
William D. Washburn	100	"

XXIV.

That each of said shareholders above named, except Edwin Hawley and William D. Washburn, acquired all the shares of stock in said Minneapolis & St. Louis Railway Company held by
43 him, as aforesaid, subsequently to April 26th, 1891; that said Hawley acquired 600 shares of his said stock November 10th, 1884, 100 shares February 4th, 1885, 300 shares June 24th, 1889, 1,100 shares July 20th, 1892; that plaintiff has no knowledge or information sufficient to form a belief as to when said Washburn acquired his said shares of stock, or any of them.

XXV.

That under the constitution and laws of the State of Minnesota each of said shareholders above named, and every person, copartnership and corporation that since said 27th day of December, 1887, has been a shareholder in said defendant, Minneapolis & St. Louis Railway Company, is liable to contribute herein to the payment of plaintiff's said judgment a sum equal to the par value of the shares of stock held by him, them or it, as the case may be, in said defendant, The Minneapolis & St. Louis Railway Company, or such proportion of said amount as may be necessary in order to satisfy said judgment in full.

Wherefore, for himself and in behalf of all persons in interest with him, especially such as come into this action and contribute to the expense thereof, plaintiff demands judgment and prays relief as follows:

That all the property, stock, things in action and effects of said defendant, The Minneapolis & St. Louis Railway Company, be sequestrated and a receiver be appointed for and of the same;

That an accounting may be had as to the assets of said rail-
44 way company, and that the same may be ascertained by or under the direction of the court, and be got in by such receiver and converted into money under the direction of this court;

That an accounting may be had as to all the just debts of said railway company, and particularly as to such as may be entitled to share in the proceeds of the assets of said railway company or in any amounts realized by the enforcement of the liability of its shareholders, and that all said debts may be ascertained by or under the direction of this court, and that the claim of this plaintiff, especially, may be adjudged and decreed a valid and just debt of said defend ant corporation, The Minneapolis & St. Louis Railway Company, and a lien upon all its property, rights, and interests, and that plaintiff may have judgment herein therefor—that is to say, in the sum of eight thousand seven hundred and nineteen dollars and ten cents ($8,719.10), with interest thereon at the rate of seven (7) per cent. per annum from the 27th day of December, A. D. 1887;

That an accounting may be had by said railway company and each of said other defendants above named as to the number and par value respectively of the shares of stock of said railway company at any time outstanding since said 27th day of December, 1887, and as to the persons at any time holding the same, and as to the times during which each shareholder has held each of such shares of stock, and that all the same may be ascertained by or under the direction of this court;

That the balance due or that will be due upon each and
45 all the debts of said railway company, after the application upon such debts respectively of the amounts proper to be applied upon them respectively of or from the proceeds of the assets of said railway company, may be ascertained by or under the direction of this court;

That the persons who are by law liable to contribute by reason of

being, or having been, shareholders in said railway company to satisfy the balance found to be due upon said debts or any of them, may also be ascertained;

That any person, copartnership or corporation found to be or to have been, a shareholder in said railway company at any time since said 27th day of December, 1887, other than those above named, may be joined as and made parties defendant herein, as soon as the names of the same shall be ascertained;

That which, if any, of the shareholders in said railway company or of those who have been shareholders in said railway company since said 27th day of December, 1887, are insolvent or unable for any cause to pay their just proportion of the debts of said company, may also be so ascertained;

That the persons entitled to share in the fund produced by the sale of the assets of said railway company and in the fund produced by such contributions respectively, and the proportions in which such persons are entitled to share in each or both of such funds, may also be so ascertained;

That each of the parties found to be liable to contribute as a shareholder to the payment of the debts of said railway company may be adjudged and compelled to pay into this court in this
46 action, for the benefit of plaintiff and those in interest with him, the amount for which he is found to be liable as aforesaid;

That all moneys so realized or realized upon the conversion of the assets of said railway company may be directed to be, and may be, distributed under the direction of the court herein, among those parties hereto who may be found to be entitled to the same in the proper proportions;

And for such other and further relief as may be just and seem meet to your honorable court.

F. W. M. CUTCHEON,
Attorney for Plaintiff.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Frank W. M. Cutcheon, being first duly sworn, deposes and says: That he is the attorney for Henry A. Gardner, the plaintiff named in the foregoing amended complaint; that he has read said complaint and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the reason why this verification is not made by said Henry A. Gardner personally, is that said Henry A. Gardner is absent from the county of Ramsey and State of Minnesota, wherein resides this affiant.

FRANK W. M. CUTCHEON.

Subscribed and sworn to before me this 13th day of May, A. D. 1896.

JOSEPH D. HALPIN,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minnesota.*

47 EXHIBIT "A."

An agreement made the 20th day of April, A. D. 1881, by and between the Minneapolis & St. Louis Railway Company, a corporation of the State of Minnesota, party of the first part, hereinafter called the first party; the Minneapolis & Duluth Railroad Company, a corporation of the State of Minnesota, party of the second part, hereinafter called the second party; the Minnesota & Iowa Southern Railroad Company, a corporation of the State of Iowa, party of the third part, hereinafter called the third party; and the Fort Dodge & Fort Ridgely Company, a corporation of the State of Iowa, the party of the fourth part, hereinafter called the fourth party.

Whereas, the Minneapolis & St. Louis Railway Company, the first party hereto, is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, and has an authorized capital stock of six million dollars at par, divided into shares of one hundred dollars each, of which there have been issued and are yet to be issued under existing contracts, in all thirty-two thousand shares, being $3,200,000 at par; and the said company has been authorized to build, among other railways in the State of Minnesota, the railway below mentioned, and under its corporate powers has already constructed and put into operation a railway extending from Minneapolis, via Albert Lea, Minnesota, to the Iowa State line, where it connects with the railway of the Minnesota & Iowa Southern Railroad Company, the third party hereto, and
48 also owns and holds under lease and operates other connecting railways in the State of Minnesota, among others the railroad of the Minneapolis & Duluth Railroad Company, the second party hereto.

And whereas, the Minneapolis & Duluth Railroad Company, the second party hereto, is a corporation formed and existing under and by virtue of the laws of the State of Minnesota, and has an authorized capital stock of $200,000 at par, divided into two thousand shares of one hundred dollars each, of which there have been actually issued eighteen hundred and thirty-five shares, being $183,500 at par; and the said second party has been authorized to build, among other railways in the State of Minnesota, the railway below mentioned, and under its corporate powers has constructed, and has now in operation, through the first party as lessee, a line of railway extending from a point on the St. Paul & Duluth railroad at White Bear Lake junction, in the county of Ramsey, to the city of Minneapolis, in the county of Hennepin, Minnesota, and to a point of intersection with the aforesaid railway of the first party hereto, and forming therewith a continuous line of railway from White Bear Lake junction aforesaid, via Minneapolis and Albert Lea aforesaid, to the Iowa State line aforesaid.

And whereas, the Minnesota & Iowa Southern Railroad Company, the third party hereto, is a corporation formed and existing under and by virtue of the laws of the State of Iowa, and has an

authorized capital stock of three million ($3,000,000) dollars at par, divided into thirty thousand shares of one hundred dollars each, of which there have been issued and are yet to be issued under existing contracts, in all twelve thousand shares of $100 each, being one million two hundred thousand dollars at par; and the said third party has been authorized to build, among other railways in the State of Iowa, the railway below mentioned, and under its corporate powers has constructed and has now in operation, through the first party as lessee, a line of railway extending from the intersection with the aforesaid railway of the first party, upon the State line between Iowa and Minnesota, via Forest City, to or near Livermore, Iowa, where it connects with the railway of the Fort Dodge & Fort Ridgely Railroad Company, the fourth party hereto.

And whereas, the Fort Dodge & Fort Ridgely Railroad Company, the fourth party hereto, is a corporation organized and existing under and by virtue of the laws of the State of Iowa, and has an authorized capital stock of nine million ($9,000,000) dollars, divided into ninety thousand (90,000) shares of one hundred ($100) dollars each, of which there have been issued and are yet to be issued under existing contracts, thirty-three hundred and forty-eight shares, being three hundred and thirty-four thousand eight hundred dollars at par; and the said fourth party has been authorized to construct and operate a railway from the State line between Iowa and Minnesota to Fort Dodge, and points southerly and southwesterly therefrom, and the other railways below mentioned, and acting under its corporate powers has constructed and has now in operation, through the first party as lessee, a line of railway extending from the point of intersection with the railway of the third party hereto, at or near Livermore, Iowa, via Humboldt and Fort Dodge to Hart's ford, and has arranged for an extension of said line to points southerly and southwesterly of Fort Dodge, with branches therefrom to Council Bluffs, Iowa, and elsewhere.

And whereas, the said first party, under its charter and the laws of the State of Minnesota, and especially under an act of the legislature of the State of Minnesota entitled "An act to amend an act entitled An act to amend an act entitled An act to incorporate the Minnesota Western Railroad Company, approved March 3d, 1853, and the acts amendatory thereof, approved February 4th, 1870," approved the 2d day of March, A. D. 1881, is empowered, with the consent of two-thirds in amount of its stockholders present at a meeting called for that purpose, to acquire any other connecting railway or railways, whether within or without the State of Minnesota, and also to consolidate its capital stock, franchises and property, with those of any other connecting railway company or companies, whether organized under the laws of the State of Minnesota or of any other State or Territory of the United States, in the construction of whose lines of railway it should have aided, or whose lines of railway should be held under lease by it.

And whereas, the said first party has aided in the construction of the railways of both the third and fourth parties, and also now

holds and operates all the railways of the second, third and
51 fourth parties under leases made to it by the said second,
third and fourth parties respectively, and the said railways of the second, third and fourth parties form, with the railway of the first party, a connected and continuous line of railway extending from White Bear Lake junction aforesaid, via Minneapolis and Albert Lea, Minnesota, and via Forest City, Livermore, Humboldt and Fort Dodge, Iowa, to points southerly and southwesterly from Fort Dodge.

And whereas, the said second party hereto is empowered under and by virtue of the laws of the State of Minnesota with the consent of two-thirds in amount of its stockholders present at a meeting called for that purpose, to consolidate its capital stock, franchises and property with those of any other connecting railway company or companies organized under the laws of the State of Minnesota, and under and by virtue of the aforesaid act of the legislature of Minnesota approved March 2d, A. D. 1881, is authorized to consolidate its stock, property and franchises with those of the first party, and of other corporations consolidated or consolidating therewith.

And whereas, the said third and fourth parties hereto are respectively empowered under and by virtue of the laws of the State of Iowa to make joint running arrangements with or to lease, or to sell their railways, properties and franchises to the first party hereto, or one to the other as owning or operating railways connecting with the railway of the said corporations respectively, and are also respectively empowered with the consent of three-fourths in amount of
their respective stockholders, by purchase, sale or otherwise
52 to merge and consolidate their respective stocks, properties,
franchises and liabilities with those of the corporations owning and operating the said connecting railways.

And whereas, upon full examination and consideration of the property and affairs of each of the parties hereto, and of the relative positions of the railways of each company in respect to traffic between White Bear Lake junction and the city of Minneapolis, and points southerly and southwesterly therefrom, the parties hereto consider that the business and profits of each company would be largely augmented and the interest of the stockholders of each company greatly promoted by the joint operation of their several railways under one management, and the equitable division of profits of such joint operation and division of profits can best be effected by a full and complete uniting of the interest and property of the said several companies under the management and control of a single board of trustees and by the consolidation and amalgamation of the capital stock, franchises, properties, earnings and management of all the said companies as fully as possible into one corporation upon the terms of this agreement.

Now, therefore, this agreement witnesseth: that in consideration of the premises and of the mutual covenants hereof, and of the sum of five dollars by each of the said parties hereto, paid to each of the other parties hereto, the receipt of which is hereby acknowledged,

it is hereby mutually covenanted and agreed by and between
53 the said parties hereto, each covenanting for itself, its successors and assigns, that they will, and hereby do, unite their interests and property, management and earnings, and will and hereby do make a full transfer of their respective railways, property, franchises and management to the new corporation hereinafter named, and will and do hereby make as full and complete consolidation and amalgamation as possible of their respective corporations, stocks, franchises, property, earnings and management under the name of "The Minneapolis & St. Louis Railway Company," to be a corporation of Minnesota and Iowa, in the manner following, that is to say:

I. The aforesaid corporations, parties hereto, do severally agree that from and after the first day of June, A. D. 1881, the entire railways, property, franchises, earnings and interests of every kind now held by the said companies respectively, and all railroads, properties, franchises, earnings and interests hereafter acquired in any way by either of said companies, shall be forever owned, held and operated jointly as one line of railway and as joint estate, to be managed and controlled under the name of "The Minneapolis & St. Louis Railway Company," of Minnesota and Iowa, forever, for the benefit of the stockholders of the respective corporations, parties hereto, upon the terms hereinafter named and by the board of trustees constituted as hereinafter provided, and that the stockholders of the respective companies, parties hereto, shall be entitled to exchange the stock held by
them in each of the companies, parties hereto, for stock of the
54 said "Minneapolis & St. Louis Railway Company," of Minnesota and Iowa, upon the terms and in the proportions hereinafter named, and that, after the exchange of stock as aforesaid, the certificates of stock in the said new company so received shall be full evidence of the rights of the aforesaid stockholders to participation in the profits of the new company.

II. The aforesaid companies, parties hereto, do hereby further severally agree that from and after the said first day of June, A. D. 1881, they shall become and be forever consolidated, amalgamated and merged into one new or consolidated company or body corporate under the name of "The Minneapolis & St. Louis Railway Company," a corporation of Minnesota and Iowa, and by that name shall have and use a corporate seal; shall sue and be sued, plead and be impleaded, contract and be contracted with; and shall use, enjoy and exercise all the powers and franchises of each of the said corporations, parties hereto.

III. The said corporations, parties hereto, further agree, that from and after the said first day of June, 1881, the entire railways, property, franchises, earnings and interests of every kind of the parties hereto, severally, and all the railways, property, franchises, earnings and interests to which the parties hereto severally are or hereafter may be entitled, shall be forever owned, held and operated jointly as one line of railway, to be managed and controlled by the said "The Minneapolis & St. Louis Railway Company," of Minnesota and Iowa, and that all the estates, real, personal and mixed, and all

the rights, privileges, franchises, immunities, credits, grants,
55 donations, easements and interests belonging to the parties hereto, severally, or to which either of the said parties shall be at any time entitled, shall become and be the property of and be vested in the said consolidated company. And it is hereby declared that the said "The Minneapolis & St. Louis Railway Company," of Minnesota and Iowa, shall be empowered as fully as any or all of the parties hereto may be, to borrow money, and for that purpose to issue bonds and to secure the payment of the same by mortgages on the property and franchises of each and all of the said parties hereto, and to sell the said bonds at any rate, and also to purchase, lease and construct other continuous lines of railway, to construct and purchase bridges, and to purchase and hold the stocks and bonds of other railway, bridge or transportation companies and to consolidate its stock and property therewith, and that the said "Minneapolis & St. Louis Railway Company," of Minnesota and Iowa, shall at all times be empowered to use the name of either of the corporations, parties hereto, in all ways and for all purposes whenever the same shall be necessary or convenient in the conduct or extension of the railways, business or property hereby united, transferred and amalgamated.

IV. The said corporations, parties hereto, in consideration of the premises, do further severally and each of the parties hereby does agree to grant and does hereby grant, bargain, sell, release, enfeoff, convey, assign, demise, confirm, transfer and set over forever unto the said consolidated company, "The Minneapolis & St. Louis Rail-
way Company," of Minnesota and Iowa, all and singular their
56 and each of their respective railways, properties and estates, real, personal and mixed, and their respective franchises, rights, easements, privileges, immunities and exemptions, and their respective earnings, tolls, increase and things in action at law or in equity, whether the aforesaid property, franchises and rights are now held and possessed or hereafter acquired, and wherever situated and however held; to have and to hold the same to the said "Minneapolis & St. Louis Railway Company," of Minnesota and Iowa, to its own use, benefit and behoof forever, as representing the interests hereby united and consolidated; and each of the said parties hereto does further agree to make, execute and deliver from time to time all deeds, grants, assignments, contracts, agreements, instruments and transfers necessary or convenient to carry fully into effect the covenants hereof and to vest as fully as in law may be, all its property, franchises, rights and immunities aforesaid in the said consolidated company.

V. The said corporations, parties hereto, do further severally agree that all the debts and liabilities of each of the parties hereto, shall be deemed and taken, and they are hereby declared to be, from and after the said first day of June, 1881, the debts and liabilities of the said consolidated company, the Minneapolis & St. Louis Railway Company, of Minnesota and Iowa; and that all contracts executed or executory made or assumed before the said first day of June, 1881, by either of the parties hereto, shall be as binding upon

the said consolidated company as they were at any time upon the corporation making the same.

57 VI. The said new company, the Minneapolis & St. Louis Railway Company, of Minnesota and Iowa, shall, for the purpose of representing the consolidated property, have a total capital stock of twenty million ($20,000,000) dollars, divided into two hundred thousand shares of the par value of one hundred dollars each, of which not more than eighty thousand shares may be issued and held as preferred shares of the character hereinafter described, and the remaining one hundred and twenty thousand shares as common shares.

There shall be issued of the said total capital stock in the first instance and for exchange for the shares of stock of the several corporations, parties hereto, not more than one hundred thousand shares, of which not more than forty thousand shares shall be preferred stock, and not more than sixty thousand shares common stock, and all of the said shares so issued in exchange for the shares of stock of the corporations, parties hereto, shall be taken and deemed to be and shall be full-paid and unassessable stock and not subject to any further payments or calls whatsoever.

The said shares of stock so to be issued in exchange for the existing stock of the parties hereto shall be divided and apportioned as is hereafter set forth.

If any dividends are declared by the said new company, the holders of the aforesaid preferred shares of stock shall be entitled to receive in each and every year two semi-annual dividends equal to three and one-half per centum upon their said preferred shares, payable out of the earnings of the company, before the

58 holders of shares of common stock shall be entitled to receive any dividends. The right of the preferred shareholders, however, to such dividends out of the net earning shall not be cumulative; that is to say, that if the aforesaid dividends of three and one-half per centum upon the preferred stock are not actually declared in any period of six months, no right shall exist in favor of the holders of such preferred stock to have such dividends afterwards declared as for the said period of six months.

After the payment of the aforesaid dividends of seven per centum annually to the holders of the said shares of preferred stock, then the holders of shares of said common stock shall be entitled to receive not exceeding two semi-annual dividends of three and one-half per centum each, in each and every year, provided that the directors of the company deem it proper to declare further dividends out of the net earnings.

After the holders of the said common stock shall have received in any period of twelve months, dividends equal to seven per centum upon the stock held by them, then all further dividends declared during such period shall be divided *pro rata* between the holders of the preferred stock and the holders of the common stock.

VII. The said shares of capital stock of the new or consolidated company, the Minneapolis & St. Louis Railway Company, of Minnesota and Iowa, which are to be exchanged for stocks of the several

corporations referred to, shall be issued and distributed in the manner following, namely:

1. There shall be issued in exchange for the thirty-two
59 thousand shares aforesaid of stock of the Minneapolis & St. Louis Railway Company, of Minnesota, the first party hereto, in the aggregate the amount of forty thousand shares of the said preferred stock of the said consolidated company, being four million dollars at par of such new preferred stock; and such new stock shall be delivered *pro rata* among the holders of the said old stock, in proportion to the amount of such old shares held by them respectively, or to which they are respectively entitled to receive under existing contracts. But each holder of the said old stock shall have the right upon the return or surrender of one-fifth of the number of shares of such preferred stock so surrendered by him, five shares of common stock of the new company; and any preferred stock so surrendered shall not be extinguished thereby, but shall be held in the treasury of the company as full-paid stock to be used for the purposes and business of the said new company.

2. There shall be issued in exchange for the eighteen hundred and thirty-five shares aforesaid of the stock of the Minneapolis & Duluth Railroad Company, eighteen hundred and thirty-five shares of the said common stock of the said consolidated company, being one hundred and eighty-three thousand five hundred dollars at par of the said common stock, and each holder of such old stock shall be entitled to receive an amount of such new common stock equal at its par value to the par value of the said old stock held by him.

3. There shall be issued in exchange for the twelve thousand shares aforesaid of the stock of the Minnesota & Iowa South-
60 ern Railroad Company, and for the thirty-three hundred and forty-eight shares aforesaid of the Fort Dodge & Fort Ridgely Railroad Company, the third and fourth parties hereto, in an aggregate, the amount of fifteen thousand three hundred and forty-eight shares of the said common stock of the said consolidated company, being one million five hundred and thirty-four thousand eight hundred dollars at par of said common stock, and each holder of the said old stock shall have the right to receive an amount of shares of such new common stock equal at its par value to the par value of the said old stock held by him.

4. The shares of the new corporation to be issued, as provided under this article, in exchange for the said old shares, may be issued to the present officers of the corporations of the first, second, third and fourth parts, respectively, for distribution by such respective officers, to the holders of the said old stock of the said corporations, parties hereto respectively, and to those who are entitled to receive such old shares respectively, in exchange for such old stock upon the terms hereinbefore stated, and in that case such officers, respectively, shall collect and surrender to the said new or consolidated company, the said old shares so taken in exchange, which old shares shall be assigned to and held forever by the said new or consolidated company for the purpose of this agreement, and a

statement that they are so held shall be stamped upon their face accordingly.

5. The board of directors of the said new or consolidated company, may nevertheless provide for the exchange of its said
61 new stock by itself directly with the holders of the old stock of either or all of the said parties of the first, second, third and fourth parts hereto, and with those entitled to such old stock of either of the said parties hereto, making such arrangements in this respect as to the stockholders of either of the said parties as may be deemed most convenient; but whether the said stocks are so exchanged directly or otherwise, the shares of such old stock shall be transferred and held and stamped as above provided.

VII. The estate and affairs of the said consolidated company, the Minneapolis & St. Louis Railway Company, of Minnesota and Iowa, shall be managed by a board of nine (9) trustees or directors, who shall elect from time to time, after the first year, a president, treasurer and secretary, and such other officers as they may by their by-laws direct, for such terms as may be fixed by such by-laws.

The names and places of residence of the directors and officers of the said new company for the first year shall be as follows:

Directors.	Residences.

62

Officers.	Residences.
—— ——, president,	——.
—— ——, vice-president,	——.
—— ——, treasurer,	——.
—— ——, secretary,	——.

The terms of office of the said directors shall extend unto the first Tuesday of October, 1881, and until their successors shall be chosen. The said officers shall hold the office for the same period, but either of the officers may be removed at any time by a vote of the board of directors.

After the first year the directors shall be chosen by the annual meeting of stockholders, to be held at the office of the company at Minneapolis, Minnesota, on the first Tuesday of the month of October in each year and shall hold their office for one year, and until their successors shall be chosen. In case the election of directors is not held upon the stated day, the directors shall call a meeting of the stockholders, upon notice of not less than thirty days, for the purpose of electing directors.

IX. Any of the holders of the shares of stock in either of the original corporations, parties hereto, who shall decline to convert their shares of stock into shares of the stock of the new consolidated corporation, shall be entitled to receive from the new consolidated corporation the full actual value of such stock immediately prior to such consolidation.

If such stockholders and the new corporation cannot agree
63 upon the value of such stock, such value may be fixed by the award of three disinterested arbitrators, one of whom shall

be appointed by such stockholder and one by such consolidated company, and the third by the two arbitrators so selected. If such stockholder declines to make such arbitration, the said value of his shares of stock shall be assessed by three disinterested commissioners appointed for that purpose by the supreme court of the State under the laws of which the corporation whose stock is so held was organized.

X. The board of directors elected or acting as herein provided shall have for the time being full power and control over all the estate and property hereby transferred to the said new consolidated company, and shall exercise all the powers corporate and other of the said consolidated company as the successor of each of the parties hereto, and of each of the corporations, parties hereto, and may make by-laws prescribing the duties of the officers of the company and regulating the transactions of the company's affairs, and may by their by-laws, make a less number than a majority of their number sufficient for a quorum of the board, and confer all powers of the board of directors at the times when the board is not in session upon an executive committee, to consist of the president and not less than three members of the board.

The board of directors may authorize and direct the borrowing of money, and may issue bonds or other evidences of debt, and may secure the same, or any part thereof, by mortgages on the franchises and property of the company, to be executed in
64 the name of the company by the officers.

Any vacancy in the said board occasioned by death, resignation, removal or otherwise, may be filled by vote of the remaining members.

XI. This agreement shall be perpetual, and each of the parties hereto and said new consolidated company shall have the power, co-operating together, to perform every act and do everything which they may be advised is proper and necessary to carry into effect and more fully complete a perpetual union, merger, amalgamation and consolidation of the parties hereto on the terms herein provided.

XII. As to each of the parties hereto this agreement shall not become effectual until the same is in due form approved by the respective stockholders of each party.

XIII. It is especially agreed that a failure in law to fully carry into effect the intention of this agreement, or of any part thereof, as hereinbefore expressed, shall not render void any part or portion of this agreement that is in itself valid; but that all the valid covenants of this agreement shall, nevertheless, be binding and obligatory upon each of the parties hereto, and that this agreement and each part thereof shall take effect, so far as the same is lawful and authorized, notwithstanding the avoidance or invalidity of any other part thereof; and that in the event of any such failure, such steps shall be taken and such contracts shall be made as shall be advised by counsel to carry into effect, as far as possible, the intents and purposes of this agreement.

65 In witness whereof, the several parties hereto have caused their respective corporate seals to be affixed to these articles

of consolidation, and the same to be signed by their respective officers.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

[CORPORATE SEAL.] By W. D. WASHBURN, *President*

Attest: WILLIAM D. HALE, *Secretary.*

In presence of—

M. P. HAWKINS.
ARTHUR J. ELLIOTT.

THE MINNEAPOLIS & DULUTH RAILROAD COMPANY,

[CORPORATE SEAL.] By ISAAC ATWATER, *President.*

Attest: WILLIAM D. HALE, *Secretary.*

In presence of—

M. P. HAWKINS.
ARTHUR J. ELLIOTT.

THE MINNEAPOLIS & IOWA SOUTHERN RAILROAD COMPANY,

[CORPORATE SEAL.] By JOHN MARTIN, *President.*

Attest: DAVID SECOR, *Secretary.*

In presence of—

M. P. HAWKINS.
HENRY L. MARTIN.

THE FORT DODGE & FORT RIDGELY RAILROAD COMPANY,

[CORPORATE SEAL.] By JOHN MARTIN, *President.*

Attest: ISAAC GARMOE, *Secretary.*

In presence of—

M. P. HAWKINS.
HENRY L. MARTIN.

66 STATE OF MINNESOTA, } ss:
County of Hennepin, }

District Court, Fourth Judicial District.

HENRY A. GARDNER, Plaintiff,
vs.
MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, WILLIAM L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Defendants.

For its separate answer to the amended complaint herein, the Minneapolis & St. Louis Railway Company respectfully shows unto the court and alleges:

1. It admits the allegations of the first and second divisions of said amended complaint, and the allegations contained in the third division of said amended complaint commencing with the words "but that," in the sixth line of said third division, and extending to the end of said third division; but denies the remaining allegations contained in said third division.

2. It admits the allegation of the fourth division of the said amended complaint, except that portion of the ninth paragraph of the fourth division of said amended complaint, which alleges
67 the improvement and equipment mortgage "did not in any way convey or cover, and was not in any way a lien upon that portion of the railway of said Minneapolis & St. Louis Railway Company extending from Winthrop, Minnesota, to Morton, Minnesota." On the contrary, this defendant alleges the fact to be, that said improvement and equipment mortgage did convey and cover, and was a lien upon that portion of the railway of said Minneapolis & St. Louis Railway Company extending from Winthrop, Minnesota, to Morton, Minnesota.

A copy of said improvement and equipment mortgage is hereto attached and is made a part of this answer.

3. At the time said improvement and equipment mortgage was executed, to wit, on the 12th day of October, 1882, that portion of the railway of said Minneapolis & St. Louis Railway Company between Winthrop and Morton was not fully constructed, but was projected, and the same was constructed and completed during the years 1882 and 1883. By the said improvement and equipment mortgage, the said Minneapolis & St. Louis Railway Company did specifically grant, bargain, sell, assign, set over, transfer and pledge unto the Central Trust Company of New York, the trustee of said mortgage, and its successors in said trust, and to its or their assigns, all the railways, property, equipment, and franchises at that date owned and acquired by the said Minneapolis & St. Louis Railway Company, or thereafter to be by it owned, or in any manner acquired, and the portion of said Minneapolis & St. Louis railway between Winthrop and Morton was included in
68 and embraced by said grant. Said mortgage also conveys, mortgages, transfers and pledges, all the lands, real estate,

grants, ways, rights of way, licenses and easements of said Minneapolis & St. Louis railway then owned, or thereafter acquired, upon which its railways were, at that time, or afterwards, situated, and which were then or subsequently connected with the railway then owned and possessed by said Minneapolis & St. Louis Railway Company, and which were or subsequently became necessary, useful or convenient for the use, maintenance and operation of its railways. Said mortgage also provided that it should be a lien, and should include and mortgage all rolling stock, equipment and property of every name and nature purchased and paid for, in whole or in part, directly or indirectly, from the proceeds of the bonds issued under the provisions of said mortgage, whether said purchase or payment be by the use of said bonds, in specie, or by way of sale and applications of the proceeds. All the line of railway between Winthrop and Morton, including the right of way, ties, rails, labor and all material used in the construction thereof, was wholly paid for from the proceeds of the sale of bonds secured by said improvement and equipment mortgage.

The portion of the line of said railway between Winthrop and Morton was a continuation and extension of the railway of said Minneapolis & St. Louis Railway Company previously constructed, and upon its construction became and was a part and portion thereof, and was connected therewith, and was necessary,
69 useful and convenient for the use, maintenance and operation of the railways previously constructed and specifically mortgaged. Said railway between Winthrop and Morton was not a separate or independent division or part of the railway of the Minneapolis & St. Louis Railway Company, but was a necessary extension or part thereof, and was intended to be included, and was included, in said mortgage.

Said Minneapolis & St. Louis Railway Company is authorized by its charter to mortgage future-acquired property. It is authorized by its charter to mortgage any portion of its road constructed or to be constructed from the proceeds of said improvement and equipment mortgage, and all property in present possession or thereafter acquired. Said improvement and equipment mortgage covered, included and mortgaged all the property of said Minneapolis & St. Louis Railway Company, including that portion of the railway between Winthrop and Morton.

4. Defendant admits the allegations of the fifth, sixth and seventh divisions of said amended complaint.

5. The defendant denies each and every allegation contained in ninth division of said amended complaint, and alleges that that portion of the Minneapolis & St. Louis railway extending from Winthrop to Morton was ordered to be sold by the said court in said foreclosure action. That the same was advertised to be sold, and was in fact sold and delivered to the purchaser, and the title of said purchaser was confirmed in and by the final decree entered in said foreclosure suit.

70 Defendant further says, that it is true that the indebtedness secured by the said improvement and equipment mort-

gage was fully paid and satisfied, but the same was so paid and satisfied by the sale and delivery to the purchaser of all the property included in said mortgage, which included and embraced that portion of the line between Winthrop and Morton, and not otherwise, and that said mortgage was so fully paid and satisfied only by reason of the fact that the portion of the line referred to was included in said sale and passed to the purchaser thereunder, and constituted a portion of the consideration for which the purchase-money was paid.

6. The allegations of the tenth division of the said amended complaint are true.

7. Answering the eleventh division of said amended complaint, defendant says: It is true that at the time said receiver delivered the property and rights before mentioned, and sold, as aforesaid, unto said The Minneapolis & St. Louis Railroad Company, said receiver also delivered unto said railroad company, and said railroad entered into possession of, and has ever since held and operated that portion of the line of railway of said Minneapolis & St. Louis Railway Company extending from Winthrop to Morton; but it is not true that no conveyance of said portion of said railway from Winthrop to Morton, or any interest therein, has ever been made to the Minneapolis & St. Louis Railroad Company, nor is it true that said railroad company has been wrongfully in possession of and enjoying the same. On the contrary, the said The Minneapolis & St. Louis Railroad Company is the owner thereof, under and
71 by virtue of the said foreclosure sale, as hereinbefore set forth.

8. It is true that said receiver of the Minneapolis & St. Louis Railway Company no longer has any portion of the railway property, franchises, rights or assets of said Minneapolis & St. Louis Railway Company in his hands, the same having been sold, by the sheriff of Hennepin county, under said decree and foreclosure, as hereinbefore set forth; and delivered by said receiver to the purchaser, pursuant to said decree and sale.

9. As to the allegations of the twelfth division of said amended complaint, this defendant says that it has neither knowledge nor information sufficient to form a belief.

10. The defendant admits the recovery of the judgment by Revilo F. Parshall on the 27th day of December, 1887, and alleges that the suit, in which said judgment was recovered by said Revilo F. Parshall against this defendant, was one brought by said Parshall on account of personal injury alleged to have been received by reason of negligence on the part of said defendant.

11. The allegations of the sixteenth division of said amended complaint are true. It is true, also, that said Minneapolis & St. Louis Railway Company is wholly insolvent. The defendant admits the allegations of the eighteenth and nineteenth divisions of said amended complaint.

12. Defendant, for answer to the twentieth, twenty-first, twenty-second and twenty-third divisions of said amended complaint, ad-

mits that the persons named in said divisions, together with
72 divers other persons, copartnerships and corporations to the plaintiff unknown, were, prior to the 2d day of November, 1894, shareholders in defendant railway company; but alleges that on the 2d day of November, 1894, said shareholders, named in said amended complaint, together with a large number of other shareholders of defendant railway company, surrendered their shares of stock; and said shares of stock, so surrendered, were thereupon cancelled and retired; and that since said 2d day of November, 1894, said shareholders, named in said amended complaint, have not been owners or holders of any shares in said defendant railway company. Defendant admits the allegations contained in the twenty-fourth division of said amended complaint.

13. The defendant denies each and every allegation of the said amended complaint not hereinbefore specifically admitted.

Further answering, this defendant respectfully shows unto the court, that the said Revilo F. Parshall, the assignor of the plaintiff herein, was a party defendant to the said foreclosure suit wherein Henry Seibert, trustee, was plaintiff, and The Minneapolis & St. Louis Railway Company, and others, were defendants. That said Revilo F. Parshall duly appeared in said cause and filed an answer therein, wherein and whereby the said Revilo F. Parshall prayed this court to grant the same relief which is asked in this amended complaint by his assignee, the said Henry A. Gardner. That in said action, and by his answer, the said Revilo F. Parshall, for himself and on behalf of all the creditors of the defendant corporation,
prayed this court, in said case, to sequestrate all the stock,
73 property, things in action and effects of the defendant corporation, and appoint a permanent receiver of the same, superseding the receiver previously appointed by this court; and all the stock, property, things in action and effects of the defendant corporation be sold and converted into money, and the proceeds thereof justly distributed in the payment of the debts of said corporation, and for other relief. That it was duly adjudicated in said action, that said Parshall was not entitled to the relief prayed for in said answer, and an order was duly made denying said application, from which said order no appeal was by said Parshall ever taken.

That at the time of the commencement of said action, Henry Seibert, trustee, plaintiff, *vs.* The Minneapolis & St. Louis Railway Company and others, defendants, in which said action the said Revilo F. Parshall was a defendant, W. H. Truesdale, the receiver duly appointed by said court on the 28th day of June, 1888, took actual, open and visible possession of all the property included in said improvement and equipment mortgage, including that portion of the said line of railway between Winthrop and Morton, and at all times thereafter, up to and including the 31st day of October, 1894, to wit, for more than six years, said receiver continued and was in actual, open and visible possession of all said mortgaged property, including that portion between Winthrop and Morton, by virtue of the said mortgage and the power therein.

That during all of said period of more than six years sub-
74 sequent to June 28th, 1888, the said receiver, with full notice to and with the full knowledge of the said Revilo F. Parshall, plaintiff's assignor, held open, notorious, and visible possession of the portion of this defendant's line of railway between Winthrop and Morton, as a part of the property included in and mortgaged by said improvement and equipment mortgage, and as a part of the security for the debts secured thereby; and during all of said period of more than six years, all the earnings of said railroad property, including the portion between Winthrop and Morton, were paid into this court as earnings of the mortgaged property, and *was*, under the orders of this court from time to time made, applied to the payment of the expenses of said receivership, the payment of interest upon the bonds secured by said improvement and equipment mortgage and other mortgages upon said property, and to the payment of such claims against the Minneapolis & St. Louis Railway Company as were properly payable from said receiver's fund; and during all of said time, the said property was administered and operated by this court as a part of the property mortgaged and included in the mortgage in process of foreclosure in said suit brought by said Seibert, trustee, to which suit this plaintiff's assignor was a party, as this plaintiff well knew during all of said period of more than six years.

Plaintiff and his assignor have at all times since June 28th, 1888, and prior to October 31st, 1894, known and had notice, actual and constructive, that the mortgagee, trustee, of the said improvement and equipment mortgage, had caused said railway property
75 between Winthrop and Morton to be taken in possession by said receiver as a part of said property mortgaged; and that said receiver was holding said property to be disposed of and sold under foreclosure in said action, and that it was the purpose and object of said foreclosure suit to cause all the property of said Minneapolis & St. Louis Railway Company, including the property between Winthrop and Morton, to be sold at foreclosure sale to satisfy said improvement and equipment mortgage.

Notwithstanding the plaintiff herein, and his assignor, knew that said Minneapolis & St. Louis Railway Company was insolvent, and that all its property and franchises had been placed in the hands of a receiver, and notwithstanding said plaintiff had notice and knowledge of all the matters hereinbefore set forth, the plaintiff and his assignor, during said period between June 28th, 1888, and October 31st, 1894, neglected, failed and refused to take any steps to enforce said claim against said Minneapolis & St. Louis Railway Company, by making application to the court by which said receiver was appointed for an order requiring said receiver to pay said judgment out of the money in the hands of said receiver, or out of the earnings of the property, or otherwise.

That at the time said Revilo F. Parshall entered an appearance in said foreclosure suit, and filed said petition and asserted his claim, under said judgment, there was in the hands of said receiver large sums of money properly applicable to the payment of just

debts against the said Minneapolis & St. Louis Railway Company but said plaintiff and his grantor wholly failed to take any
76 steps or make any attempt to procure the payment and satisfaction thereof. Said plaintiff and his assignor have during all of said time, between June 28th, 1888, and October 31st, 1894, knowing that said property between Winthrop and Morton was held by said receiver as a part of the property included in said improvement and equipment mortgage, and was being operated and administered by said receiver under said mortgage, pursuant to the orders of said court, neglected, failed and refused to assert or enforce the lien of said judgment, or to ask the payment thereof from the funds in the hands of said receiver; and have knowingly permitted the said property between Winthrop and Morton to be seized and possessed by said receiver as a part of the mortgaged property, and to be operated and administered as such; and have knowingly permitted the same to be sold under foreclosure and as a part of the mortgaged property included in said improvement and equipment mortgage, and delivered to the purchasers, and the title thereto confirmed in said purchaser by final decree (a copy of which decree is hereto attached and hereby made a part hereof); and during all of said term and time between June 28th, 1888, and October 31st, 1894, the plaintiff and his assignor have acquiesced in the possession of said receiver, and the operation, administration and sale of said property, without objection or protest; and said plaintiff and his assignor have, during all of said time, negligently and carelessly failed to assert any claim of priority or lien, or any lien under said judgment, or to assert any claim, or payment
77 thereof, against the funds in the hands of said receiver. And the defendant says that, by reason of the laches and negligence of said plaintiff, and his assignor, in failing to assert said claim and lien, and by reason of the acts and conduct, and silence or conduct of said plaintiff, as hereinbefore set forth, the plaintiff is estopped to assert any claim to a lien upon any portion of the property referred to or described in the said amended complaint prior or superior to the lien of said improvement and equipment mortgage, or prior or superior to the title of the purchasers under said foreclosure sale.

Further answering, this defendant says that the property formerly owned by the said Minneapolis & St. Louis Railway Company is encumbered by a mortgage, executed by the present owner thereof, the Minneapolis & St. Louis Railroad Company, on the 2d day of November, 1894, and a supplementary mortgage dated January 8th, 1895, made to secure bonds to the amount of ten millions of dollars, of which five million, two hundred and eighty-two thousand have been issued and sold and are now outstanding, which said mortgages specifically include, embrace and mortgage that portion of the line of railway hereinbefore referred to as being located between Winthrop and Morton. Said mortgages, last referred to, were executed and delivered prior to the commencement of this suit, and were executed in good faith, without notice or knowledge of plaintiff's claim that said property was not included or embraced in said

improvement and equipment mortgage and said foreclosure sale; and the same were executed and delivered to the Central Trust
78 Company, of New York, the trustee named therein, with the understanding and belief on the part of both mortgagor and mortgagee that the portion of the line referred to was included in said improvement and equipment mortgage and passed by said foreclosure sale; and relying upon the final decree of this court confirming the title thereto in the purchaser; and the said The Minneapolis & St. Louis Railroad Company, the said mortgagor, was in actual possession of said property and operating the same at the time of the execution of said mortgages. The bonds secured by said last-named mortgages, which are subject in terms to certain other mortgages upon said property, were sold by said trustee and purchased by the holders thereof with the knowledge and understanding, and relying upon the fact that they were secured by mortgage upon that part of the railway between Winthrop and Morton.

The plaintiff and his assignor, by remaining silent and permitting said property to be possessed, administered and operated by the said receiver for more than six years, and by failure to assert any claim or lien thereon in the answer of said Revilo F. Parshall, filed in said foreclosure suit, and permitting the railway to be sold under said foreclosure, and delivered to the purchaser without objection and without asserting any lien thereon or claim thereto, as against the holders of the improvement and equipment mortgage, have been negligent and are estopped from asserting any claim thereto.

Defendant further says, that the said improvement and
79 equipment mortgage was executed many years prior to the time when plaintiff's cause of action against the Minneapolis & St. Louis Railway Company accrued, and was intended and understood by both mortgagor and mortgagee to cover and include the line between Winthrop and Morton. Said mortgage was construed in this court, in said foreclosure suit, to include said line between Winthrop and Morton, and the sale made pursuant to the decree in said foreclosure case was construed by this court to include said line between Winthrop and Morton; and said decree and adjudication is binding upon the plaintiff, his assignor, said Revilo F. Parshall, having been a party defendant in the action in which said judgment and decree were rendered.

Wherefore, this defendant prays that the plaintiff may take nothing by his said action, and that the defendant may have his costs.

ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for Defendant,
1104 *Guaranty Loan Building, Minneapolis, Minn.*

STATE OF MINNESOTA, }
County of Hennepin, } ss:

Albert E. Clarke, being duly sworn, says that he is attorney for the defendant, The Minneapolis & St. Louis Railway Company, in the above-entitled action; he has read the foregoing answer and

knows the contents thereof; that the same is true to the best of his knowledge, information and belief; and the reason why this
80 verification is not made by an officer of said defendant is that all the officers of said defendant are absent from said county of Hennepin, where resides this affiant, its attorney.

ALBERT E. CLARKE.

Subscribed and sworn to before me this 16th day of June, 1896.

W. F. BOOTH,

[NOTARIAL SEAL.] *Notary Public, Hennepin County, Minn.*

(Filed Nov. 19th, 1896.)

STATE OF MINNESOTA, *County of Hennepin.*

District Court, Fourth Judicial District.

HENRY A. GARDNER, Plaintiff,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, WILLIAM L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. P. Olcott, William A. Read, J. Kennedy Tod, William Strauss, and William D. Washburn, Defendants.

The defendants, William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, for answer to the amended complaint in the above-entitled action, say:

1. They admit the allegations of the first and second divis-
81 ions of said amended complaint, and the allegations contained in the third division of said amended complaint commencing with the words "but that," in the sixth line of said third division, and extending to the end of said third division; but deny the remaining allegations contained in said third division.

2. They severally admit the allegations of divisions five, six, seven, eight, ten, sixteen, seventeen, eighteen and nineteen of said amended complaint; and further, admit the recovery of the judgment by Revilo F. Parshall on the 27th day of December, 1887, mentioned in the thirteenth division of said amended complaint; and allege that said judgment was recovered by the said Parshall in an action brought by him against the said defendant railway company to recover for personal injuries alleged to have been received by him by reason of negligence on the part of said defendant railway company.

3. These defendants severally admit the allegations of the fourth division of said amended complaint, except the allegation embodied in the ninth paragraph of said fourth division, to the effect that the improvement and equipment mortgage did not include, convey or cover, and was not a lien upon that certain portion of the Minneapolis & St. Louis railway between Winthrop and Morton, which allegation these defendants deny; and allege the fact to be that the portion of said railway referred to was included in and covered by

said improvement and equipment mortgage and subject to the lien thereof.

4. These defendants severally admit *that* the allegations
82 in the eleventh division of said amended complaint, that at the same time that said receiver delivered said property and rights, sold under and by virtue of the decree of foreclosure of *of* the improvement and equipment mortgage unto the said The Minneapolis & St. Louis Railroad Company, said receiver also delivered unto said railroad company, and said railroad company entered into possession thereof, and has ever since held, operated and enjoyed that portion of the line of railway of said defendant, The Minneapolis & St. Louis Railway Company, extending from Winthrop to Morton, in the State of Minnesota.

5. As to the allegations of the fourteenth and fifteenth divisions of the said complaint, these defendants severally say that they have no knowledge as to the truth of the allegations therein contained, nor have they any information sufficient to form a belief as to the truth of such allegations, and, therefore, deny the same.

6. These defendants severally deny each and every allegation of the complaint not hereinbefore specifically admitted or denied on information and belief.

7. The defendants severally, for answer to the twentieth, twenty-first, twenty-second and twenty-third divisions of said amended complaint, admit that the persons named in said divisions, together with divers other persons, copartnerships and corporations to the plaintiff unknown, were, prior to the 2d day of November, 1894, shareholders in defendant railway company; but allege that on the 2d day of November, 1894, said shareholders named in said amended complaint, together with a large number of other shareholders
83 of defendant railway company, surrendered their shares of stock; and said shares of stock, so surrendered, were thereupon cancelled and retired; and that since said 2d day of November, 1894, said shareholders, named in said amended complaint, have not been the owners or holders of any shares in said defendant railway company.

Defendants severally admit the allegations contained in the twenty-fourth division of said amended complaint.

These defendants severally and each deny that they are, under the constitution and laws of the State of Minnesota, liable to contribute to the plaintiff's said judgment a sum equal to the par value of the shares of stock held by them individually, or in any other sum, amount or proportion whatever.

That the said Minneapolis & St. Louis Railway Company was incorporated prior to the adoption or enactment of the constitutional provisions and statutes referred to. That said Minneapolis & St. Louis Railway Company was incorporated in the year 1853, under and pursuant to the provisions of chapter 66, of the special laws enacted by the legislature of the Territory of Minnesota, in the year 1853, under and by the name of the Minnesota Western Railroad Company, and which name was subsequently changed to the Min-

neapolis & St. Louis Railway Company, substantially as set forth in the first division of said complaint.

That the liability of the stockholders of said Minneapolis & St. Louis Railway Company was fixed by said act of incorpora-
84 tion, and not otherwise; and that the constitutional provision and *and* laws referred to in the complaint are not applicable to or binding upon these defendants in that behalf.

For further answer and defense, these defendants, each for himself, severally, says that the plaintiff's cause of action against these defendants, as stockholders of the Minneapolis & St. Louis Railway Company, is barred by the statute of limitations of Minnesota, as embodied in section 5136, of the General Statutes of 1894, and the provisions of section 6, chapter 66, of the General Statutes of 1878.

Wherefore, these defendants, and each of them, prays that he may go hence with costs.

ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for Defendants, 1104 *Guaranty Loan Building, Minneapolis, Minn.*

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Albert E. Clarke, being duly sworn, says that he is attorney for William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, defendants in the above-entitled action; he has read the foregoing answer, and knows the contents thereof; that the same is true to the best of his knowledge, information and belief; and the reason why this verification is not made by the above-named
85 defendants is that they are absent from the said county of Hennepin, wherein resides the affiant, their attorney.

ALBERT E. CLARKE.

Subscribed and sworn to before me this 16th day of June, 1896.

W. F. BOOTH,
[NOTARIAL SEAL.] *Notary Public, Hennepin County, Minn.*

(Filed April 23, 1897.)

STATE OF MINNESOTA, }
County of Hennepin. }

District Court, Fourth Judicial District.

HENRY A. GARDNER, Plaintiff,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, WILLIAM L. BULL, AUGUST BELMONT, EDWIN HAWLEY, RICHARD B. HARTSHORNE, F. P. OLCOTT, W. A. READ, WILLIAM STRAUSS, J. KENNEDY TOD, and WILLIAM D. WASHBURN, Defendants.

Amendment to the separate answer of the defendants William Strauss, William L. Bull, Richard B. Hartshorne, and Edwin Hawley.

Now comes the defendants, William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, and for amendment to their separate answer to the amended complaint, allege:

86 1. Neither the plaintiff, Henry A. Gardner, nor his assignor, Revilo F. Parshall, have ever at any time been residents or citizens of the State of Minnesota; but, on the contrary, the said Henry A. Gardner and Revilo F. Parshall have always and at all times been non-residents of said State, said Henry A. Gardner being and having at all times herein referred to been a citizen and resident of the State of Illinois, and said Revilo F. Parshall having at all times referred to in the pleadings in this cause been a resident of the States of Wisconsin and Illinois.

2. The defendants, William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley have been at all times and now are residents of the State of New York, and never have been, nor have either of said defendants been, at any time a resident of said State of Minnesota.

3. It is the statute law of the State of New York, and is provided by the general statutes of said State of New York, as follows: SEC. 380. "The following actions must be commenced within the following periods, after the cause of action has accrued."

SEC. 382. Within six years.

1. An action upon a contract obligation or liability, express or implied, except a judgment or sealed instrument.

2. An action to recover upon a liability created by statute, except a penalty or forfeiture.

ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for Defendants.

Dated October 9th, 1896.

87 STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Albert E. Clarke, being duly sworn, says that he is the attorney for the defendants in the above-entitled action; that he has read

the foregoing amendment to the answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; and that the reason why this verification is not made by one of the defendants is, that said defendants are each and all absent from the county of Hennepin, said State of Minnesota, wherein resides this affiant, their said attorney.

ALBERT E. CLARKE.

Subscribed and sworn to before me by said Albert E. Clarke on this 9th day of October, 1896.

W. F. BOOTH,

[SEAL.] *Notary Public, Hennepin County, Minn.*

(Served October 9th, 1896.)
(Filed November 16th, 1896.)

(Title of Action.)

Reply.

And now comes said plaintiff above named, Henry A. Gardner, and for his reply to the answer of the defendant, The Minneapolis & St. Louis Railway Company, to the amended complaint of said plaintiff herein, respectfully shows unto the court and says:

88 1. Plaintiff has no knowledge or information sufficient to form a belief as to whether the copy of said improvement and equipment mortgage attached to said answer is a true copy of the original of said mortgage.

2. Plaintiff admits that at the time said improvement and equipment mortgage was executed, to wit: on the 12th day of October, 1892, that portion of the railway of said Minneapolis & St. Louis Railway Company between Winthrop and Morton was not fully constructed, but was projected; but plaintiff admits and alleges that said portion of said line of railway had at that time been definitely located, and that the greater part of the right of way therefor between Winthrop and Morton had been contracted for, purchased or otherwise acquired, and partially graded by said Minneapolis & St. Louis Railway Company, and that said portion of said line was completed and the operation thereof commenced by said Minneapolis & St. Louis Railway Company on or prior to the first day of January, 1883.

3. Plaintiff admits that said mortgage provided that it should be a lien upon and should include and mortgage all rolling stock, equipment and property of every name and nature purchased and paid for, in whole or part, directly or indirectly, from the proceeds of the bonds issued under said mortgage, whether said purchase or payment were made by the use of said bonds in specie or by way of sale of said bonds and application of the proceeds. But plaintiff denies that the portion of said line of railway of said Minneapolis &

89 St. Louis Railway Company, situate between Winthrop and Morton was paid for, in whole or in part, directly or indirectly, from the proceeds of the sale of the bonds secured by said improvement and equipment mortgage.

4. Plaintiff admits that the portion of the railway of said Minneapolis & St. Louis Railway Company between Winthrop and Morton was a continuation and extension of the railway of said Minneapolis & St. Louis Railway Company previously constructed, and was connected therewith; but denies that the same was necessary for the use, maintenance or operation of the railway previously constructed or owned by said Minneapolis & St. Louis Railway Company, and specifically mortgaged by said improvement and equipment mortgage; although plaintiff admits that the same was useful and convenient in the use, maintenance and operation of said railway.

Plaintiff admits that said railway between Winthrop and Morton was not operated by said Minneapolis & St. Louis Railway Company as a separate and independent division of the railway of said Minneapolis & St. Louis Railway Company, but denies that it was a necessary extension or part thereof, and expressly denies that it was the intention of the parties to said improvement and equipment mortgage that the same should be included in said mortgage, and denies that the same was in fact included in said mortgage.

5. Plaintiff admits that said Minneapolis & St. Louis Railway Company is authorized by its charter to mortgage future-acquired property, including any portion of its road, and all property in present possession or thereafter acquired; and that said Minne-
90 apolis & St. Louis Railway Company had such authority at the date of the execution of said improvement and equipment mortgage.

6. Plaintiff admits that the action wherein the judgment recovered by said Revilo F. Parshall, plaintiff's predecessor in interest, against said Minneapolis & St. Louis Railway Company was rendered was one brought by said Parshall to recover damages on account of personal injuries sustained by said Parshall, by reason of negligence on the part of said defendant.

7. Plaintiff has no knowledge or information sufficient to form a belief as to whether on the 2nd day of November, 1894, or at any time, said defendant shareholders named in said answer of said railway company to said amended complaint surrendered, or attempted to surrender, their shares, or any of their shares of stock in said Minneapolis & St. Louis Railway Company, or as to whether said shares of stock, or any thereof, were thereafter cancelled or retired.

But plaintiff expressly alleges that if any such surrender, cancellation or retirement of the stock of said defendant railway company was ever made, it was made long subsequently to the entry of the judgment of said Revilo F. Parshall, in plaintiff's amended complaint herein mentioned, and while said judgment was in full force and was made with actual and constructive knowledge on the part of, and notice to, the shareholders in said railway company so surrendering said stock in said defendant railway company, that said railway company was then and there wholly insolvent and
91 was liable upon a large amount of indebtedness, including said judgment, and for the purpose of evading the liability of said shareholders here sought to be enforced, and that the sur-

render, cancellation and retirement of said stock, if they occurred, were wholly ineffectual to affect the rights of this plaintiff and of plaintiff's predecessor in interest, said Parshall, or the relations theretofore existing between this plaintiff or his said predecessor in interest and said defendant shareholders.

8. Plaintiff admits that said Revilo F. Parshall, the assignor of the plaintiff herein, was a party defendant to said foreclosure suit wherein said Henry Seibert, trustee, was plaintiff, and The Minneapolis & St. Louis Railway Company and others were defendants; but plaintiff alleges that said Parshall was made such defendant under a wrong name and was never served with process in said action; that said Parshall appeared for the first time in said action and filed an answer therein upon the 7th day of October, 1892; that said answer was filed under the authority of an order of said court wherein said foreclosure action was pending, wherein and whereby it was provided that the allegations of said answer should be taken and considered as controverted by any party to the action who might desire to traverse or avoid such allegations as fully as could be done by pleading on the part of any such parties; that in and by said answer said Parshall demanded relief as follows, and none other, viz:

"Wherefore, for himself and in behalf of all the creditors of the defendant corporation, especially such as come in and con-
92 tribute to the expenses thereof, and they are numerous, widely distributed and difficult to ascertain, this defendant demands judgment and prays the decree of this court:

1. That pursuant to the statute in such case made and provided, this court sequestrate all the stock, property, things in action and effects of the defendant corporation and appoint a permanent receiver of the same superseding the receiver heretofore appointed in this action and his receivership.

2. That the stock, property, things in action and effects of the defendant corporation be sold and converted into money and the proceeds thereof justly distributed as far as may be in the payment of its just debts.

3. That, to that end, by its interlocutory decree or order, this court appoint a permanent receiver of all the stock, property, things in action and effects of the defendant corporation, superseding the receiver heretofore appointed herein, and his receivership, and direct the said defendant corporation and said William H. Truesdale, now receiver as aforesaid, by an instrument in writing to be approved by this court, or a judge thereof, good and sufficient to vest in said permanent receiver the legal title thereof, to convey, grant and assign to such permanent receiver, his successors and assigns, all the stock, property, things in action and effects of the defendant corporation, wherever situate, now under the care, custody or control of said William H. Truesdale, receiver, or otherwise; and direct the defendant corporation and said William H. Truesdale, receiver, to discover all such property, stock, things in action and effects
93 and to deliver the same to, and put the same in the possession of such permanent receiver, and, by a reference or oth-

erwise, as to this court shall seem proper, provide for the marshalling of the assets of the defendant corporation, the ascertainment of the creditors thereof, and its just debts, due or to become due, and the amount and priority thereof, and when the same became or will become due, and, if secured, how secured; and provide for a proper notice to the creditors of the defendant corporation, that they may be the more effectually bound by the judgment herein.

4. That this defendant recover his attorneys' fees, costs, and the disbursements herein payable out of the first moneys that come to the hands of said permanent receiver, and have such other and further order, judgment, decree or relief, as to this court shall seem right and proper, and consonant with equity and good conscience."

That upon the same day upon which said answer was filed by said Parshall, the attorneys for said Parshall served and filed a notice of motion in said foreclosure action, wherein and whereby said attorneys notified the other parties to said action that they would apply to said court wherein said action was pending for an order or interlocutory decree to be made and entered by said court in said action, whereby said court should sequestrate the stock, property, things in action and effects of said defendant corporation, The Minneapolis & St. Louis Railway Company, and appoint a receiver of the same superseding the receiver therefor theretofore appointed in said action, and should require said defendant
94 corporation and the receiver thereof theretofore appointed to convey and assign to such new receiver so to be appointed all the stock, property, things in action and effects of said defendant corporation, and should require said receiver of said defendant corporation theretofore appointed to discover all such property, stock, things in action and effects and to deliver the same and put the same in possession of such receiver, to be appointed as aforesaid; that thereafter said motion was brought on for hearing before said court; that at the time said answer of said Parshall was filed in said foreclosure action all, or substantially all, of the testimony in said foreclosure action had been taken before the court in which the same was pending, and at the time said motion was brought on for hearing, as aforesaid, all the testimony in said action had been so taken and the court had made and filed its findings of fact thereon, but had not yet made or filed its conclusions of law in said action; that said motion, having been heard before said court, said court denied the same, upon the ground that said action having reached the stage which it then had reached, it would be improper for said court to grant the relief asked for by said motion upon an interlocutory application; that thereafter none of the issues raised by said Parshall's said answer were ever tried or any decision or judgment tendered thereon; that said defendant Parshall was not, nor were any of his rights, foreclosed by the final decree or any decree entered in said action, either in form or otherwise; that said Parshall was not granted either in or by the
95 decree of sale entered in said action, or in or by the final decree entered therein, the right to redeem the property of said Minneapolis & St. Louis Railway Company, ordered to be sold

in said action, or any part thereof, from said sale, and that neither said final decree nor said decree of sale, or any other order or decree, entered in said foreclosure action, either in form or otherwise, purported to affect either favorably or adversely, any of the rights of said Parshall except as hereinabove stated. And plaintiff expressly denies that it was duly or in any manner adjudicated in said action that said Parshall was not entitled to the relief prayed for in his said answer, and denies that any order was ever made in said action denying the application for relief contained in his said answer, except so far as said application for interlocutory relief was concerned. Plaintiff admits that said Parshall never took any appeal from the order denying his said application for interlocutory relief.

9. Plaintiff admits that that portion of said answer of said defendant railway company beginning with the words, "That at the time of the commencement of said action," in the nineteenth line of the sixth page of said answer, and concluding with the words, "and the power therein," in the thirty-first line of said page of said answer, is true.

10. Plaintiff has no knowledge or information sufficient to form a belief as to whether during all the period during which the property of said defendant railway company was in the hands of
96 a receiver, all the earnings of said railroad property, or any of the earnings of that portion thereof between Winthrop and Morton, were paid into this court, whether as earnings of the mortgaged property or otherwise, or as to whether the same were under the orders of this court, from time to time made, applied to the payment of the expenses of said receivership, the payment of interest upon the bonds secured by said improvement and equipment mortgage, and other mortgages upon said property, and to the payment of such claims against said Minneapolis & St. Louis Railway Company as were properly payable from said receiver's fund, or to any of said purposes.

11. Plaintiff has no knowledge or information sufficient to form a belief as to whether at the time said Revilo F. Parshall entered his appearance in said foreclosure suit and filed his said answer therein, there were in the hands of the receiver of said Minneapolis & St. Louis Railway Company, large sums of money properly applicable to the payment of just debts against said Minneapolis & St. Louis Railway Company.

12. Plaintiff admits that the copy of the final decree in said foreclosure action attached to the answer of said defendant railway company herein is, in the main, a copy of the final decree entered in said action, but whether the same is an accurate copy of said final decree, plaintiff has no knowledge or information sufficient to form a belief, and prays that said defendant railway company may be required to make due proof in that behalf upon the trial of this action.

13. Plaintiff has no knowledge or information sufficient
97 to form a belief as to any of the matters or things stated in that portion of said answer beginning with the words, "Further answering, this defendant says," in the sixteenth line of the

ninth page thereof, and concluding with the words, "and Morton," in the eleventh line of the tenth page of said answer, which said portion of said answer consists of allegations concerning two mortgages alleged to have been made by the Minneapolis & St. Louis Railroad Company on the 2nd day of November, 1894, and on the 8th day of January, 1895, respectively, and the issuance and negotiation of bonds thereunder, and concerning other matters alleged to be connected therewith.

14. Plaintiff admits that said improvement and equipment mortgage was executed some years prior to the time when plaintiff's cause of action against said Minneapolis & St. Louis Railway Company accrued.

15. Except as hereinbefore admitted, plaintiff expressly denies each and every allegation, matter and thing in said answer of said defendant railway company herein contained.

Wherefore, plaintiff prays judgement as in his amended complaint herein demanded.

F. W. M. CUTCHEON,
Attorney for Plaintiff, 404 *N. Y. Life Bldg., St. Paul, Minn.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

F. W. M. Cutcheon, being duly sworn, says that he is the
98 attorney for the plaintiff in the above entitled action; that he has read the foregoing reply and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the reason why this verification is not made by the said plaintiff is that he is absent from the county of Ramsey and State of Minnesota, wherein resides this affiant, his attorney in said action.

F. W. M. CUTCHEON.

Subscribed and sworn to before me this 22d day of June, 1896.
MINNA W. WAMZER,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

(Title of Action.)

Reply.

Now comes the above-named plaintiff, Henry A. Gardner, and for a reply to the separate answer of the defendants, William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, to the amended complaint of said plaintiff, in the above-entitled action, shows unto the court and says:

1. Plaintiff admits that the judgment recovered by his predecessor in interest, Revilo F. Parshall, upon the 27th day of December, 1887, as alleged in his amended complaint herein, was recovered by said Parshall in an action brought by said Parshall against said defendant railway company to recover damages for personal
99 injuries received by said Parshall, by reason of negligence on the part of said defendant railway company.

2. Plaintiff has no knowledge or information sufficient to form a belief as to the truth of any of the matters or things alleged in said amended answer, in that portion thereof beginning with the words, "but alleged," in the 6th line of the 7th subdivision thereof, and concluding with the words, "and retired," in the fourth line of the third page of said answer, to the effect that said defendant shareholders and other shareholders in said defendant railway company surrendered their stock in said company, and to said company, and that said stock was retired and cancelled by said company on or about the second day of November, 1894, and therefore denies the same. And plaintiff expressly alleges that if any such surrender, cancellation or retirement of the stock of said defendant railway company was made, it was made with actual and constructive knowledge on the part of and notice to the shareholders in said company so surrendering said stock and said defendant railway company; that said railway company was then and there wholly insolvent and was liable upon a large amount of indebtedness, and for the purpose of evading the liability of such shareholders here sought to be enforced, and that such surrender, cancellation and retirement of said stock, if they occurred, were wholly ineffectual to affect the rights of this plaintiff or his predecessor in interest, said Parshall, or the relations theretofore existing between this plaintiff, or his said predecessor in interest, and said defendant shareholders.

100 3. Plaintiff denies that said Minneapolis & St. Louis Railway Company was incorporated prior to the adoption or enactment of the constitutional provisions and the statutes referred to in the plaintiff's amended complaint herein, and alleges that said defendant, The Minneapolis & St. Louis Railway Company, was incorporated and exists under and by virtue of the act of the legislature of Minnesota, approved March 2, 1881, and entitled, "An act to amend an act entitled 'An act to incorporate the Minnesota Western Company,' approved March third (3rd), one thousand eight hundred and fifty-three (1853), and the amendatory act thereof, approved February fourth (4th), eighteen hundred and seventy (1870)," and of the consolidation agreement entered into by the Minneapolis & Duluth Railroad Company, the Minnesota & Iowa Southern Railroad Company, and the Fort Dodge & Fort Ridgely Railroad Company, and the Minneapolis & St. Louis railway, a corporation theretofore existing, as alleged in plaintiff's amended complaint herein, and not otherwise: and that said incorporation occurred and said defendant, The Minneapolis & St. Louis Railway Company, began to exist as a corporation June 1, 1881, and not previously.

4. Plaintiff expressly denies that the liability of the shareholders of said defendant, The Minneapolis & St. Louis Railway Company, was fixed by the act incorporating the same, or by any act or acts of incorporation.

5. Answering the second defense interposed by said defendant shareholders in their said answer to the cause of action stated

101 in plaintiff's amended complaint herein, plaintiff alleges that when the cause of action stated in plaintiff's amended complaint accrued against said defendant shareholders, and each of

them, each of said defendant shareholders was outside of the State of Minnesota, and that ever since said cause of action so accrued, each of said defendant shareholders has been absent from and resided outside of said State, and that each of said defendant shareholders has been absent from and resided outside of said State of Minnesota ever since a time prior to said 27th day of December, 1887.

Wherefore, plaintiff demands judgment as heretofore prayed in his amended complaint herein.

F. W. M. CUTCHEON,
Attorney for Plaintiff, 404 *New York Life Building, St. Paul, Minn.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Frank W. M. Cutcheon, being duly sworn, says that he is the attorney for Henry A. Gardner, plaintiff in the above-entitled action; that he has read the foregoing reply and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief, and that the reason why this verification is not made by said plaintiff is, that said plaintiff is absent from said
102 county of Ramsey and State of Minnesota, wherein resides this affiant, his attorney.

FRANK W. M. CUTCHEON.

Subscribed and sworn to before me this 18th day of June, 1896.

MINNA W. WANZER,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

(Served June 19th, 1896.)
(Filed Nov. 19th, 1896.)

(Title of Action.)

Stipulation of Facts.

It is hereby stipulated and agreed by and between the plaintiff and William L. Bull, Richard B. Hartshorne, Edwin Hawley and William Strauss, answering defendants that the following statements are true, and may be taken and considered by the court herein upon the trial, or any hearing hereof, as if established by competent and uncontradicted evidence duly received upon the trial of this said action.

The defendant, The Minneapolis & St. Louis Railway Company, is a domestic railroad corporation located within this State. During the year 1853, by an act of the legislature of the Territory of Minnesota, approved March 3rd, 1853, entitled "An act to incorporate the Minnesota Western Railroad Company," there was incorporated the Minnesota Western Railroad Company, which con-
103 tinued to be known by said name until on or about the 26th day of May, A. D. 1870, on which said day its board of directors by resolution duly adopted, and proceeding under the

authority conferred by an act approved February 4th, 1870, amendatory of said original act and entitled "An act to amend an act to incorporate the Minnesota Western Railroad Company," lawfully changed the name of said corporation to the Minneapolis & St. Louis Railway Company, by which name it was thereafter lawfully and commonly known. On or about the 20th day of April, 1881, said corporation, proceeding under and in accordance with the provisions of another act of the legislature of the State of Minnesota, approved March 2nd, 1881, and entitled "An act to amend an act entitled 'An act to incorporate the Minnesota Western Railroad Company,' approved March third (3rd), one thousand eight hundred and fifty-three (1853), and the act amendatory thereof, approved February fourth (4th), eighteen hundred and seventy (1870)," did duly enter into an agreement with certain other corporations, to wit: the Minneapolis & Duluth Railroad Company, the Minnesota & Iowa Southern Railroad Company and the Fort Dodge & Fort Ridgely Railroad Company, by and under the terms of which all said corporations above mentioned agreed to make a full and complete consolidation and amalgamation of all said corporations and their respective stocks, franchises, property, earnings and management, in accordance with the provisions of said act of March 2nd, 1881, under the name of the Minneapolis & St. Louis Railway Company, which said agreement was to and did
104 take effect June 1st, 1881. Thereafter said companies filed their said articles of consolidation as provided by said act of the legislature of Minnesota of March 2nd, 1881, a copy of which said agreement and articles of consolidation is hereto attached, marked Exhibit "A," and made a part hereof. Thereafter, and on or about said June 1st, 1881, said consolidation was duly consummated, each of said constituent companies in form conveying and transferring unto said consolidated corporation their respective stocks, franchises, rights, property and earnings, in accordance with the provisions of said act of March 2nd, 1881. Thereafter said consolidated company entered upon, and ever after until the second day of November, 1894, enjoyed the franchises, rights, property and earnings of its said constituent corporations conveyed as aforesaid. Said consolidated corporation is the defendant corporation, The Minneapolis & St. Louis Railway Company, above named.

Said defendant corporation, The Minneapolis & St. Louis Railway Company, was invested, by said acts above mentioned and the laws and statutes of said Territory and State of Minnesota, with the usual and general powers of a body incorporate, and especially was empowered to construct, maintain and operate a railroad with a single or double track from Stillwater on Lake St. Croix, to the city of St. Anthony, on the Mississippi river, both in Minnesota, and thence across said river to the city of Minneapolis, in said State, to a convenient point of junction with the Mississippi Valley railroad or the Hastings & Dakota railroad, or both, besides eight branches.

105 Said Minneapolis & St. Louis Railway Company did not, nor did its constituent company, known first as the Minne-

sota Western Railway Company, and afterwards as the Minneapolis & St. Louis Railway Company, take any steps towards constructing or acquiring any line of railway until after the 6th day of March, 1869, unless the proceedings next hereinafter recited, which were had, constitute such steps: Said Minnesota Western Railroad Company, afterwards known as the Minneapolis & St. Louis Railway Company, in November, 1853, published in the Weekly Minnesotean, a newspaper published in St. Paul, a notice that books for receiving subscriptions to the capital stock of said Minnesota Western Railroad Company would be opened in St. Paul and New York on the 26th day of December, 1853, and kept open for thirty days from that date. Said books were opened and kept open in accordance with said notice. On December 6th, 1853, at a meeting of the incorporators of said Minnesota Western Railroad Company held at St. Paul, Franklin Steele was authorized to receive payment of $5.00 per share upon the capital stock of said railroad company, to be paid at the time of subscribing, as required by the act of incorporation of said railroad company.

On December 26th, 1853, $100,000 of the stock of said company having been subscribed, a notice was given of a meeting of the stockholders of said company to be held at St. Paul January 27th, 1854, for the purpose of choosing nine directors of said company, which notice was published in said Weekly Minnesotean.
106 Said meeting was held at the time and place appointed and the nine directors elected. At said meeting 1,740 shares of the capital stock of said company were represented. The corporate organization of said railroad company was kept up from that time until the organization of the consolidated company above mentioned.

On and prior to the 28th day of June, A. D. 1888, said defendant, The Minneapolis & St. Louis Railway Company, owned and operated a system of railroads in the States of Minnesota and Iowa, extending from Minneapolis through Hopkins, Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, in the State of Iowa, with a branch line from Hopkins, via Winthrop, Minnesota, to Morton, in said last-named State. Said railway company also owned a line of railway extending from Minneapolis to White Bear, in the State of Minnesota, which was leased to and operated by the St. Paul & Duluth Railroad Company.

On said day last mentioned, said defendant railway had executed three (3) mortgages, securing bonds theretofore issued and varying in amount, which said mortgages, and six others, were liens upon different portions of said lines of railway. Said three mortgages were the following:

1. A mortgage executed by said defendant, The Minneapolis & St. Louis Railway Company, to the Central Trust Company of New York City, commonly called the Pacific Extension mortgage, dated June first, 1881, securing outstanding bonds of the aggregate par value of one million three hundred and eighty-two thou-
107 sand dollars ($1,382,000), together with interest thereon at the rate of six (6) per cent. per annum, which said mortgage was

and still is a lien upon those portions of the railway of said defendant, Minneapolis & St. Louis Railway Company, extending from Minneapolis to Hopkins, Minnesota, and from Hopkins, Minnescta, to Morton, Minnesota.

2. Another mortgage executed by said defendant, The Minneapolis & St. Louis Railway Company, to said Central Trust Company of New York City, commonly called the consolidated mortgage, dated January second, 1882, securing outstanding bonds of the aggregate par value of one hundred and eight thousand dollars ($108,000), together with interest thereon at the rate of six (6) per cent. per annum, which said mortgage was and still is a lien upon those portions of the railway of said defendant, Minneapolis & St. Louis Railway Company, extending from Minneapolis to White Bear, in Minnesota, and from Minneapolis, via Merriam junction, to Albert Lea, Minensota, and from the southern boundary of the State of Minnesota, via Fort Dodge, Iowa, to Angus, Iowa, and from Hopkins, Minnesota, to Morton, Minnesota.

3. Another mortgage executed by said Minneapolis & St. Louis Railway Company to said Central Trust Company of New York City, commonly called the improvement and equipment mortgage, dated October 12th, 1882, securing outstanding bonds of the aggregate par value of three million eight hundred and eighty-seven thousand dollars ($3,887,000), together with interest thereon
108 at the rate of — (6) per cent. per annum, which said mortgage was a lien upon those portions of the railway of said defendant, Minneapolis & St. Louis Railway Company, extending from Minneapolis to White Bear, in Minnesota, and from Minneapolis via Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, Iowa, and from Hopkins to Winthrop, Minnesota, as well as upon all, or substantially all, the equipment and moveable property of said defendant, The Minneapolis & St. Louis Railway Company.

It is claimed by the plaintiff herein that said last-mentioned mortgage did not in any way convey or cover, and was not in any way a lien upon, that portion of the railway of said defendant Minneapolis & St. Louis Railway Company extending from Winthrop, Minnesota, to Morton, Minnesota. On the other hand, it is claimed by the defendants herein that said mortgage did cover and convey, and was a lien upon all said portion of said railway.

Each of said mortgages was on said day, and (with the exception of said improvement and equipment mortgage) still is, a lien upon the portion or portions of said railway covered by it, superior in equity to the lien of any and every mortgage subsequent to it in date.

In addition to said mortgages above described and mentioned there existed upon said 28th day of June, 1888, a number of contracts of various kinds, to wit: Construction contracts, traffic agreements, trackage agreement, leases, etc., which, upon said day, constituted liens upon the lines of said defendant, The Min-
109 neapolis & St. Louis Railway Company, superior in equity to the lien of said improvement and equipment mortgage above mentioned.

Prior to said 28th day of June, 1888, said Central Trust Company, of New York, was duly removed as trustee of the trust created by the mortgage above mentioned, known as the improvement and equipment mortgage, and Henry Seibert, of New York, was duly appointed trustee thereunder as its successor and in its place and stead, and forthwith entered upon the discharge of the duties of said trust.

On said 28th day of June, 1888, said Henry Seibert as trustee, under said improvement and equipment mortgage, duly commenced an action in this said court, wherein said Seibert as such trustee, was plaintiff, and said defendant, The Minneapolis & St. Louis Railway Company, and others were defendants, for the purpose of foreclosing said improvement and equipment mortgage, and of securing a sale in said action of all the franchises, rights, property and estates upon which the same was a lien or charge. Such proceedings were had in said action that thereafter, and on said 28th day of June, 1888, by an order of this said court, entered in said action, a receiver was appointed in aid of such foreclosure of all the property, railway, franchise, rights and estates of said defendant, The Minneapolis & St. Louis Railway Company, which said receiver forthwith qualified and thereupon took possession of all the property, railway, franchises, rights and estates of said railway company, and thereafter continued to hold and operate the same until
110 the 2nd day of November, A. D. 1894, as hereinafter stated. Said action was not in any sense a winding-up action or a sequestration, insolvency or bankruptcy proceeding. A copy of said order appointing said receiver is hereto attached and marked Exhibit "B," and made a part thereof.

Thereafter such proceedings were had in said foreclosure action that on the 29th day of June, 1893, an interlocutory decree was entered in said action whereby it was ordered and decreed that said improvement and equipment mortgage be foreclosed and that all the property, railway, franchises, rights and estates, upon which said improvement and equipment mortgage was then a lien, but none other, should be sold at judicial sale, at the time and in the manner therein provided, in case no redemption thereof should be made as therein provided. No redemption of said property, railway, franchises, rights or estates having been made as in said decree provided, all said property, railway, rights, franchises and estates upon which said improvement and equipment mortgage was a lien or charge, but none other, were, under and in accordance with the provisions of said interlocutory decree, offered for sale upon the 11th day of October, 1894, and then and there sold by the sheriff of Hennepin county, Minnesota, to F. P. Olcott, as chairman of a committee organized to purchase said property, and thereupon a certificate of such sale was duly executed and delivered by said sheriff to said Olcott, as such chairman. Thereafter, and upon the 31st day of October, 1894, said sale was duly confirmed by
111 this said court, and a final decree duly entered in said foreclosure action, adjudging the title to the railway, property,

franchises, rights and estates so sold to be in the assignees (hereinafter mentioned) of said Olcott, purchaser at said foreclosure sale.

In said foreclosure action all amounts due upon any and all the bonds and coupons secured by said improvement and equipment mortgage, and all indebtedness secured thereby, were fully paid and satisfied.

Immediately after said foreclosure sale said F. P. Olcott, as chairman of said committee of purchasers, sold and assigned to divers persons said certificate of sale and all right, title and interest thereunder or by virtue of said sale arising, and his said assignees, pursuant to the statutes of the State of Minnesota, in such case provided, did on or about the 2nd day of November, 1894, organize and incorporate a railway company called the Minneapolis & St. Louis Railroad Company, which said The Minneapolis & St. Louis Railroad Company thereupon, as successor of said Minneapolis & St. Louis Railway Company, became invested with all the property, railway, franchises, rights, privileges, immunities and estates embraced in said improvement and equipment mortgage and sold as aforesaid; and, as such successor to said Minneapolis & St. Louis Railway Company, entered into and has ever since remained in possession of, operating and enjoying all said property, rights, franchises and estates, the receiver appointed in said action then and there (that is, on or about the said 2nd day of November, 1894,)
112 delivering all of the same unto said The Minneapolis & St. Louis Railroad Company upon said 2nd day of November, 1894.

At the same time that said receiver delivered said property and rights above mentioned and sold as aforesaid unto said The Minneapolis & St. Louis Railroad Company, said receiver delivered unto said railroad company, and said railroad company entered into possession of, and has ever since held, operated and enjoyed, that portion of the line of railway of said defendant, The Minneapolis & St. Louis Railway Company, extending from Winthrop to Morton, in the State of Minnesota. Said railroad company is now, and ever since said 2nd day of November, 1894, has been in possession of and enjoying that portion of said railway under either title or claim of title to the same by virtue of said foreclosure sale, made as above stated in said foreclosure action above mentioned. Said receiver of said Minneapolis & St. Louis Railway Company no longer has any portion of the railway, property, franchises, rights or estates of said defendant, The Minneapolis & St. Louis Railway Company, in his hands. Said receiver has, so far as the custody, care or control of any part of the estate of said Minneapolis & St. Louis Railway Company is concerned, entirely discharged his trust, and is no longer entitled to take or hold any part of said estate.

On the 27th day of December, A. D. 1887, Revilo F. Parshall, in an action then pending in the circuit court of the United States, for the district of Minnesota, and brought to recover damages for personal injuries suffered by said Parshall in consequence of the
113 negligence of said defendant railway company, said court then and there having jurisdiction of all the parties, and of

the subject-matter of said action, wherein said Revilo F. Parshall was plaintiff and said defendant herein, Minneapolis & St. Louis Railway Company, was defendant, recovered a judgment against said defendant, Minneapolis & St. Louis Railway Company, for the sum of eight thousand seven hundred and nineteen dollars and ten cents ($8,719.10), which said judgment was then and there duly entered in said action. Upon said 27th day of December, 1887, said judgment was duly docketed in the office of the clerk of said circuit court of the United States for the district of Minnesota. Said judgment is wholly unpaid. Said judgment, so entered in said action and described as aforesaid, has not been in any way reversed, modified or superseded, and that there is no appeal or writ of error or other proceeding pending upon which said judgment can be reviewed, but said judgment is still in full force and effect.

After the rendition, entry and docketing of said judgment against said defendant, Minneapolis & St. Louis Railway Company, said defendant secured a stay of proceedings and of execution in said action wherein said Parshall was plaintiff and said railway company was defendant, for the purpose of providing time within which to have settled a bill of exceptions therein and to make a motion therein for a new trial of said action, and thus delayed said action until after the commencement of the foreclosure action, begun as aforesaid, and the appointment of a receiver therein, so that
114 when said stay of proceedings was vacated by the order of said United States circuit court, as it was thereafter vacated, it was impossible, and has ever since been impossible, to enforce said judgment or execution upon it or to realize thereupon, against or out of the estate of said railway company, for the reason that all the property of said defendant corporation upon which execution could have been levied was at the time of the vacation of said stay, and ever since has been, in the custody of said receiver, or in the hands of the Minneapolis & St. Louis Railroad Company.

After the entry of said judgment in favor of said Parshall, and before the commencement of this action, a writ of execution, in due form of law, out of and under the seal of said United States circuit court for the district of Minnesota, subscribed by the clerk of said court, and attested in the name of the Chief Justice of the Supreme Court of the United States, duly endorsed, directed and delivered to the United States marshal for said district of Minnesota, was duly issued against the property of said defendant, Minneapolis & St. Louis Railway Company, and thereafter, and before the commencement of this action, and on or about the 5th day of October, A. D. 1892, was returned into said court wholly unsatisfied, and said execution is the only execution ever issued upon said judgment. Said judgment does yet remain and is wholly unsatisfied and unpaid; that there is now due and owing upon said judgment said sum of eight thousand, seven hundred and nineteen dollars and ten cents ($8,719.10), with interest from the 27th day of December, 1887.

115 On or about the first day of October, 1892, said Revilo F. Parshall duly sold said judgment, together with any and all

sum or sums of money or other benefit or advantage that might be had or obtained by reason of the same, unto said plaintiff, Henry A. Gardner, and then and there duly executed unto said plaintiff an assignment of said judgment duly signed, sealed, and acknowledged in accordance with law, which said assignment of judgment was heretofore, and on the 18th day of October, A. D. 1895, duly filed in the office of the clerk of said United States circuit court for the district of Minnesota. Plaintiff is, and ever since said first day of October, A. D. 1892, has been the owner of and entitled to said judgment and all benefit or advantage to be had or obtained by reason thereof, and to enforce the same by execution or otherwise, and to prosecute any and all legal proceedings upon said judgment, and to give good and sufficient releases and discharges as fully as might have been done by said Revilo F. Parshall while said Parshall owned and held said judgment.

Said Minneapolis & St. Louis Railway Company is wholly insolvent, and, unless it be said portion of said railway extending from Winthrop to Morton as aforesaid, has not, and since said foreclosure sale has not had, any money or property whatsoever.

Said portion of said railway extending from Winthrop to Morton aforesaid consists of road-bed, rails, yards, station grounds, station-houses, bridges, culverts, and such other lands and structures
116 only as constitutes a part of the corpus of the railway of said Minneapolis & St. Louis Railway Company, and the same and all thereof are necessary in the operation of said railway.

Said Pacific Extension mortgage and said consolidated mortgage are still liens upon said portion of said railway, and said mortgages still secure respectively all the bonds secured by them upon said 28th day of June, 1888, and in consequence any sale of said portion of said railway upon execution, if the same could be had, would be ineffectual, inasmuch as only a nominal sum could be realized upon such sale.

At the time of and after the entry of the plaintiff's said judgment as aforesaid, and until at least November 2d, 1894, each of a large number of persons, copartnerships and corporations held shares of the capital stock of said defendant, The Minneapolis & St. Louis Railway Company, and each of a large number of persons, copartnerships and corporations now hold shares of such capital stock, unless having ceased so to do by reasons of facts hereinafter stated. The names of many of such shareholders are to plaintiff unknown, and plaintiff has no knowledge or information as to the names of or number of shares held by any one of the persons, copartnerships or corporations that have been or are such shareholders respectively, save as hereinafter stated.

Among those who have been shareholders in defendant are the defendants above named, to wit: William L. Bull, August Belmont, Edwin Hawley, Frederick P. Olcott, Richard B. Hartshorne, William A. Read, J. Kennedy Tod and William Strauss, and
117 they are now, and each of them is now, a shareholder in said defendant, The Minneapolis & St. Louis Railway Company,

unless they have ceased so to be shareholders by reason of facts hereinafter stated.

Each of said shareholders above named, except Edwin Hawley acquired all the shares of stock in said Minneapolis & St. Louis Railway Company held by him, as hereinafter stated, subsequently to April 26th, 1891. Said Hawley acquired 600 shares of his said stock November 10th, 1884, 100 shares February 4th, 1885, 300 shares June 24th, 1889, 1,100 shares July 20th, 1892.

Said individual defendants above named, between about April 26th, 1891, and November 2nd, 1894, held at least the number of shares in said defendant, The Minneapolis & St. Louis Railway Company, next hereinafter set opposite their names respectively, which said shares are of the par value of one hundred dollars ($100) each:

William L. Bull	200	shares.
August Belmont	100	"
Edwin Hawley	2,100	"
Richard B. Hartshorne	100	"
F. P. Olcott	10,623	"
W. A. Read	4,720	"
William Strauss	2,200	"
J. Kennedy Tod	2,900	"

and they still hold the same unless they have ceased so to do by reason of the facts next hereinafter stated.

On or about the 2d day of November, 1894, almost all the shareholders of said Minneapolis & St. Louis Railway Company, including all said defendants, offered to surrender all their said
118 shares of stock to said railway company; thereupon said railway company accepted such offer to surrender and in form retired all such shares and cancelled the certificates representing the same. (Such surrender, cancellation and retirement of the stock of said defendant railway company was made with knowledge on the part of and notice to all said shareholders in said company so surrendering said stock and of and to said defendant railway company that said railway company was then and there wholly insolvent and was liable upon a large amount of indebtedness, including plaintiff's said judgment.) Said surrender, retirement and cancellation of said stock were made gratuitously and without consideration. Plaintiff never had any knowledge or notice thereof until the service of the answer of said defendant shareholders herein to plaintiff's amended complaint.

All said defendant shareholders who join in said answer to plaintiff's amended complaint are residents of the State of New York, and have been such since a time prior to December 27th, 1887, and during all said period have been out of the State of Minnesota.

Said Henry A. Gardner and Revilo F. Parshall, his assignor, have never at any time been citizens or residents of the State of Minnesota.

Said Henry A. Gardner is and has been at all times since the judgment referred to in said complaint was assigned to him by said Revilo F. Parshall, a citizen and resident of the State of Illinois.

That said Revilo F. Parshall was at all times prior to his
119 death a citizen and resident of the States of Wisconsin and Illinois, and was at the time of his death, a citizen and resident of the State of Illinois.

The statute of limitations of the State of New York are as recited in the amendment to the answer of the defendants William Strauss, William L. Bull, Richard B. Hartshorne, and Edwin Hawley.

Nothing in this stipulation shall preclude either of the parties to said above entitled action from introducing evidence upon any of the issues involved in said action not inconsistent with this stipulation of facts.

It is further stipulated that all special legislative acts and parts of acts dealing with said defendant, The Minneapolis & St. Louis Railway Company, or said Minnesota Western Railroad Company, under whatsoever name, shall be considered in evidence herein, without anything farther; as well as all general laws and constitutional provisions of this State that may be read or referred to upon the hearing hereupon.

Dated Nov. 10th, 1896.

(Signed) F. W. M. CUTCHEON,
Attorney for Plaintiff.
ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for Defendants Bull, Hartshorne, Hawley, and Strauss.

120 "EXHIBIT B."

STATE OF MINNESOTA, }
County of Hennepin. }

District Court, Fourth Judicial District.

HENRY SEIBERT, Trustee, Successor to the Central Trust Company of New York, Plaintiff,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY ET AL., Defendants.

This cause coming on to be heard on the application of the plaintiff for the appointment of a receiver to take possession of, manage and control the property of the defendant, The Minneapolis & St. Louis Railway Company, J. W. Shaw, Esq., and Eugene M. Wilson, Esq., appearing for the plaintiff, and J. D. Springer, Esq., appearing for the defendant, The Minneapolis & St. Louis Railway Company, and the court being satisfied that said railway company is insolvent; that the improvement and equipment mortgage in which the plaintiff is trustee is not adequate security for the principal of the bonds issued under it; that said company had already made default in the payment of interest which has accrued and become payable on

the said bonds, as well as upon other bonds secured by other mortgages; that it appears that money, which it has received and
121 continues to receive, which should be applied to the payment of interest on the improvement and equipment bonds, have been, and if said company remains in possession of its property will continue to be applied, on other obligations; that there is reason to apprehend that because of the company's insolvent condition it will be obstructed in the performance of its duties as a common carrier to the great injury and inconvenience of the public, the company and its creditors; therefore grant said application; and does hereby appoint and constitute William H. Truesdale as receiver of this court, charged with the performance of the duties incident to the office of receiver, and especially those hereinafter stated. He is hereby directed:

1. To assume possession of all property, moneys and assets of the said railway company; to manage and operate its railway and appurtenant property, and to receive and receipt for all moneys which are now or shall hereafter become due and payable to it from any and all persons and corporations whomsoever.

2. To cause to be prepared and submitted to the court a statement of the liabilities of the corporation, including its debts secured by mortgage or other lien, with its other debts.

3. To carefully keep and preserve all property and moneys which shall come into his hands as receiver; to operate and manage said railway and its appurtenant property with a view to securing the best results practicable under the circumstances.

122 4. To keep full and true accounts showing all receipts and disbursements by him made, which account shall commence as of the first day of July next.

5. To observe and perform, until otherwise ordered by the court, all obligations assumed by said railway company in traffic and running arrangements and leases as the same may have been hitherto observed and performed by said railway company; and especially to observe and perform those set out in divisions VIII, XVIII, XIX, XX, XXIII, XXIV, XXV and XXVI of this complaint.

It is further ordered that the receiver is authorized to disburse out of moneys which shall come into his hands as receiver, so much as shall be necessary in payment of the legitimate expenses incurred in operating and maintaining said railway and its appurtenant property, but that no other disbursements shall be made until ordered by the court; that for convenience of adjustment the existing accounts of the railway company shall be closed as of the 30th day of the present month, but all balances then due thereon to the railway company shall be paid to the receiver and debited to him in his accounts as of the 1st day of July, 1888.

The receiver hereby appointed will execute as principal, with two sureties, to be approved by the court, a bond in the sum of one hundred thousand dollars ($100,000), conditioned that he will faithfully perform his duties as such receiver.

A. H. YOUNG,
Judge of said Court.

(June 28th, 1888.)

123 (Title of Action.)

Additional Stipulation of Facts.

It is hereby stipulated between the parties hereto that the following facts, not included in the stipulation of facts heretofore made, shall be and are hereby conceded to exist, and are admitted as part of the evidence in this case.

1. The Minneapolis & St. Louis Railway Company referred to in the consolidation agreement referred to in folios four (4), five (5) and six (6) of the amended complaint, a copy of which said consolidation agreement is attached to the stipulation of facts previously made, was, as it existed prior to said consolidation, that certain railroad corporation of the State of Minnesota, incorporated under the name of the Minnesota Western Railroad Company, by a special act of the legislature of the Territory of Minnesota, approved March 3d, 1853, as set forth in folio 2, paragraph 1, of said amended complaint. The Minneapolis & Duluth Railroad Company, referred to in said consolidation agreement, was an organization created under an agreement, a copy of which is attached to this stipulation. The line of road constructed by said Minneapolis & Duluth Railroad Company was one of the lines of road which the Minnesota Western Railroad Company was authorized to build, and was built, under an agreement, a copy of which is attached to this stipulation.

2. The other two constituent companies, parties to said consolidation agreement, the Fort Dodge & Fort Ridgely Railroad
124 Company and the Minnesota & Iowa Southern Railroad Company, were, at and previous to the execution of said consolidation agreement, railroad corporations of the State of Iowa. Copies of the articles of incorporation of said two last-named railroad companies are hereto attached and hereby made a part of this stipulation.

3. At the time of the incorporation of said two last-named railroad companies in the State of Iowa, the law of said State of Iowa authorized the incorporators of railroad companies to exempt themselves from personal liability for the corporate debts by embodying in the articles of incorporation an article or provision declaring said exemption.

4. The actual construction of a line of railway by the Minneapolis & St. Louis Railway Company was commenced during the summer and fall of 1870, since which time said company, or the said consolidated company, have at all times operated and maintai-ed a line of railway in the State of Minnesota.

F. W. M. CUTCHEON,
Attorney for Plaintiff.
ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for Defendants.

Dated November 18th, 1896.

125 EXHIBITS OFFERED IN EVIDENCE.

EXHIBIT "1."

Agreement.

The Minneapolis & St. Louis Railway Company with Henry T. Welles and W. D. Washburn.

Memorandum and agreement made and entered into this 1st day of April, one thousand eight hundred and seventy-one, by and between the Min-apolis & St. Louis Railway Company, party of the first part, and Henry T. Welles and William D. Washburn, of Hennepin county, State of Minnesota, parties of the second part.

Witnesseth, that whereas, the Minneapolis & — Louis Railway Company is desirous of having that part of its road (lying between the St. Paul & Pacific railroad and the Lake Superior & Mississippi railroad) built as early as is practicable, and is unable at the present time to advance the money necessary to construct and equip the same, therefore, in consideration of the premises and of the agreements and promises hereinafter contained on the part of the parties of the second part, the said party of the first part does hereby agree to issue to the parties of the second part above named (Henry T. Welles and William D. Washburn) a certificate of special stock of the said Minneapolis & St. Louis Railway Company to the amount of two thousand shares of one hundred dollars par value
126 each share, which said special stock is and shall be only applicable to that portion of the Minneapolis & St. Louis Railway Company authorized to be constructed by the charter of said company, beginning at or near the junction depot of the First division of the St. Paul & Pacific Railroad Company in St. Anthony, and running thence in a northeasterly direction to a point of junction with the Lake Superior & Mississippi railroad at or near White Bear lake, in Ramsey county, State of Minnesota, being estimated at about thirteen miles, more or less. Said stock shall be transferable by the parties of the second part by sale or assignment, on such terms and to such persons as they may see fit, and shall entitle the said Henry T. Welles and William D. Washburn, their executors, administrators and assigns, to the full, complete and exclusive ownership and control of all and every the rights, franchises, privileges, hereditaments and powers of the said Minneapolis & St. Louis Railway Company, applicable or in any way pertaining to, or which may be hereafter applicable or pertain to that portion of the railroad authorized to be constructed by the said The Minneapolis & St. Louis Railway Company as above mentioned. The party of the first part further agrees that the parties of the second part may organize a corporation by the name of the Minneapolis & Duluth Railroad Company to construct such part of the road above mentioned and to manage, operate and enjoy the same, and to have and exercise all the rights, powers, franchises and privileges in re-

gard to said road and its appurtenances as now belong or
127 appertain to the Minneapolis & St. Louis Railway Company, and to mortgage and to lease said road and its franchises and appurtenances upon such terms and for such time as shall to such company seem fit, and generally to do all acts and things requisite and necessary in and about the premises, and the construction and management of said road.

The party of the first part further promises and agrees to and with the parties of the second part, their executors, administrators and assigns, and with the corporation to be organized by them under this agreement, that it will give them and such corporation an equal share, right and privilege in all depot grounds and buildings which it may purchase or acquire in Minneapolis, and in any bridge it may build across the Mississippi river to connect its road with the part of its said road above mentioned east of the Mississippi river, and the benefit and advantage of any contract it may make with any other road, and especially with the First division of the St. Paul & Pacific railroad for running over its road from St. Anthony into Minneapolis, and the use of any road, side track, switches, or roads connecting with the mills in Minneapolis which the said party of the first part may hereafter construct or cause to be built, or own in the said city of Minneapolis; the parties of the second part or their assigns, or the said corporation to be organized by them, first to pay a just proportion of the expense of such structures and right of way and depots and depot grounds.

128 The parties of the second part, for themselves and their assigns, promise and agree in consideration of the issuance to them of said special stock and the rights and privileges above granted, to build or cause to be built a railroad, beginning at or near the junction depot of the First division of the St. Paul & Pacific railroad in St. Anthony to a point of junction with the Lake Superior & Mississippi railroad at or near White Bear lake, in the county of Ramsey, and to complete and furnish the same suitable for use and the running of cars thereon by the first day of September, one thousand eight hundred and seventy-one.

In witness whereof the Minneapolis & St. Louis Railway Company has caused its corporate seal to be hereunto affixed, duly attested by the president and secretary of said company, and the parties of the second part have hereunto set their hands and seals the day and year first above written.

HENRY T. WELLES,
President Minneapolis & St. Louis Railway.

Attest: ISAAC ATWATER, *Secretary.*

HENRY T. WELLES. [SEAL.]
WILLIAM D. WASHBURN. [SEAL.]

[One 25c. rev. stamp cancelled.]

Signed, sealed, and delivered in presence of—
R. P. RUSSELL.
E. S. ADAMS.

[CORPORATE SEAL.]

129 At a meeting of the stockholders of the Minneapolis & St Louis Railway Company, held at the office of the company in Minneapolis April 1st, 1871, pursuant to adjournment.

On motion of Paris Gibson, seconded by W. D. Washburn, the following resolution was adopted:

Whereas, a contract has been entered into by and between the Minneapolis & St. Louis Railway Company, parties of the first part, and H. T. Welles and W. D. Washburn, parties of the second part, and bearing date April 1st, 1871, whereby two thousand shares of one hundred dollars par value each share, is to be issued to said parties of the second part for the purpose of building and equipping that part of its road lying between the St. Paul & Pacific railroad and the Lake Superior & Mississippi railroad, therefore resolved, that the said contract be and the same hereby is in all things ratified, confirmed and approved.

I. ATWATER, *Secretary.*

(Duly acknowledged.)

EXHIBIT "2."

Articles of Agreement and Association.

Articles of agreement and association made and concluded the twenty-fourth day of April, anno Domini one thousand eight hundred and seventy-one (1871), between Henry T. Welles and W. D. Washburn, of Hennepin county, State of Minnesota, parties of the first part, and Wm. G. Moorhead, Samuel M. Felton,
130 and Frank H. Clark, of the city of Philadelphia, parties of the other part.

Whereas, by an act of the Legislative Assembly of the Territory of Minnesota, entitled "An act to incorporate the Minnesota Western Railroad Company," approved March 3d, 1853, certain persons therein named, with such other persons as might thereafter become associated with them, their successors and assigns, were created a body corporate by the name of the Minnesota Western Railroad Company, with authority to construct and operate a railroad as therein mentioned.

And, whereas, by a supplement to the said act approved March 5th, 1869, the said company was authorized to construct and run a railroad from Stillwater on Lake St. Croix; thence running to the city of St. Anthony, on the Mississippi river; thence across the said river via *of* the city of Minneapolis to a convenient point of junction with certain other railroads therein mentioned.

And, whereas, by a certain other act of the legislature of the State of Minnesota, entitled "An act to amend an act entitled An act to incorporate the Minnesota Western Railroad Company, approved March third, one thousand eight hundred and fifty-three (1853), and the acts amendatory thereof," approved February fourth, one thousand eight hundred and seventy (1870), it was provided among other things as follows, to wit: And said company may by a resolution of its board of directors change the name of said company and

adopt any suitable name by which said company shall in future be known, and may designate the name by which any branch line
131 shall be known, to take effect after public notice of such change shall be given for one month in any daily paper published at the city of Minneapolis, but such change of name shall not effect any rights or liabilities of said company under any former name. And said company shall have power to create and issue in such manner and on such terms as it may deem expedient, one or more classes of preferred stock and special stock, and to make such agreements as it may deem proper with the respective holders thereof as to the dividends thereon, and the securities for such dividends, and to make such agreements as it may deem proper with the holders of any such special stock for the appropriation of the net earnings of any portion of the railroad which it may construct or otherwise acquire to the payment of dividends on such special stock as may be issued in respect thereto, which appropriation, as made by such agreement, shall be effectual to secure to the said and future holders of such stock, the application of such net earnings as in the said agreement provided, against any future act of the company or any of its general liabilities. And the said company may make such agreements as it may deem proper with the holders of any such special stock as to the construction and administration of the portion of said railroad to which said stock may pertain, and for the separate organization of the holders of such special stock for the purpose of that construction and administration, and enabling them or directors chosen by them separately, or in conjunction with the other directors, to exercise in respect to the portion of
132 the road to which such special stock may pertain, all the powers of the company subject to the provisions of such agreement when made and entered into."

And whereas, by a further supplement to the charter of the said company, passed by the legislature of the State of Minnesota, approved the 25th day of February, one thousand eight hundred and seventy-one (1871), it was provided among other things as follows, to wit:

The directors of the said company, by whatever name the same may be called, shall be and they are hereby authorized and empowered to borrow money for the corporate purposes of said company by the issue and sale of its bonds, for the purpose of the construction and equipment of any portion of its main line or branches thereof, and shall have power to make and execute a mortgage or mortgages upon such portions of its road constructed and to be constructed, together with its franchises and all or any part of the property of said company now in possession or hereafter acquired, and may permit or grant the right to any person or persons either as individuals or in a corporate capacity, to construct, build, equip, hold, operate, manage and control any such portion of said road or branch under such name, and with such regulations as such persons or persons or corporation may adopt, with the same right and liabilities as the said company may have or be subject to by virtue of its charter and the amendments thereto. Whenever any number of

persons shall become associated as a company or corporation pursuant to the charter of said Minnesota Western Railroad
133 Company, and the acts amendatory thereof, or otherwise, for the purposes aforesaid, they shall have power at any time to contract with any other railroad company or companies of this State in relation to any matters or things touching the construction of its railroad and appendages and the running of cars and locomotives thereon, and the leasing for any term of years of the whole or any part of its railroad and franchises to any other railroad company of this State, and contracts so made shall be valid and binding on the parties thereto.

And whereas, at a meeting of the board of directors of the said Minnesota Western Railroad Company held at Minneapolis on the twenty-sixth day of May, one thousand eight hundred and seventy, the name of the said railroad company was changed to the Minneapolis & St. Louis Railway Company, by which last-mentioned name the said company has since been known and designated.

And whereas, by authority of the aforesaid acts of the legislature of the State of Minnesota, a certain agreement was made and concluded between the said Minneapolis & St. Louis Railway Company and Henry T. Welles and W. D. Washburn, parties hereto of the first part, dated the first day of April, A. D. one thousand eight hundred and seventy one (1871), as follows, to wit: Memorandum of agreement made and entered into this first day of April, A. D. one thousand eight hundred and seventy-one (1871), by and between the Minneapolis & St. Louis Railway Company, party of the first part, and Henry T. Welles and William D. Washburn,
134 of Hennepin county, State of Minnesota, parties of the second part, witnesseth.

That whereas, the Minneapolis & St. Louis Railway Company is desirous of having that part of its road lying between the St. Paul & Pacific railroad and the Lake Superior & Mississippi railroad built as early as is practicable, and is unable at the present time to advance the money necessary to construct and equip the same, therefore in consideration of the premises and of the agreements and promises hereinafter contained on the part of the parties of the second part, the said party of the first part does hereby agree to issue to the parties of the second part above named, Henry T. Welles and W. D. Washburn, a certificate of special stock of the said Minneapolis & St. Louis Railway Company to the amount of two thousand shares of one hundred dollars par value each share, which said special stock is and shall be only applicable to that portion of the Minneapolis & St. Louis Railway Company authorized to be constructed by the charter of said company beginning at or near the junction depot of the First division of the St. Paul & Pacific Railroad Company, in St. Anthony, and running thence in a northeasterly direction to a point of junction with the Lake Superior & Mississippi railroad at or near White Bear lake, in Ramsey county, State of Minnesota, being estimated at or about thirteen miles, more or less. Said stock shall be transferrable by the parties of the second part, by sale or assignment, on such terms

and to such persons as they may see fit, and shall entitle the said Henry T. Welles and William D. Washburn, their executors, administrators and assigns to full, complete and ex-
135 clusive ownership and control of all and every the rights, franchises, privileges, hereditaments and powers of the said Minneapolis & St. Louis Railway Company, applicable or in any way pertaining to or which may be hereafter applicable or pertain to that portion of the railroad authorized to be constructed by said Minneapolis & St. Louis Railway Company, as above mentioned. The party of the first part further agrees that the said parties of the second part may organize a corporation by the name of the Minneapolis & Duluth Railroad Company to construct such part of the road above mentioned, and to manage, operate and enjoy the same, and to have and exercise all the rights, powers, franchises and privileges in regard to the said road and its appurtenances, as now belong or appertain to the Minneapolis & St. Louis Railway Company, and to mortgage and lease said road and its franchises and appurtenances on such terms and for such time as shall to such company seem fit, and generally do all acts and things requisite and necessary in and about the premises, and the construction and management of said road. The party of the first part further promises and agrees to and with the parties of the second part, their executors, administrators and assigns, and with the corporation to be organized by them under this agreement, that it will give them and such corporation an equal share, right and privilege in all depot grounds and buildings which it may purchase or acquire in Minneapolis, and in any bridge it may build across the Mississippi river to connect its road with the part of its said road above mentioned, east of the Mississippi river,
136 and the benefit and advantage of any contract it may make with any other road, and especially with the First division of the St. Paul & Pacific railroad for running over its road from St. Anthony into Minneapolis, and the use of any road, side tracks, switches or roads connecting with the mill, in Minneapolis, which the said party of the first part may hereafter construct or cause to be built, or own in the said city of Minneapolis, the parties of the second part and their assigns or the said corporation to be organized by them first to pay a just proportion of the expenses of such structures, and right of way and depots and depot grounds. The parties of the second part for themselves and their assigns promise and agree, in consideration of the issuance to them of said special stock and the rights and privileges above granted, to build or to cause to be built a railroad beginning at or near the junction depot of the First division of the St. Paul & Pacific railroad in St. Anthony to a point of junction with the Lake Superior & Mississippi railroad at or near White Bear lake, in the county of Ramsey, and to complete and furnish the same suitable for use and the running of cars thereon by the 1st of September, 1871. Recorded in reg. of deeds office, Hennepin county, Minnesota, in Book 3, Miscellaneous, 399, &c., and in Ramsey county, Minnesota, in Book "B," Miscellaneous, p. 501, &c.

And, whereas, at a meeting of the stockholders of the Minneapolis & St. Louis Railway Company held at Minneapolis on the

first day of April, A. D. eighteen hundred and seventy-one,
137 the aforesaid agreement, and the issuing of the said two thousand shares of special stock as therein mentioned were duly approved, ratified and confirmed.

And, whereas, the said two thousand shares of special stock, having been duly issued to the said Henry T. Welles and W. D. Washburn, in pursuance of the said agreement, the said parties, their executors, administrators and assigns, under and by virtue of the aforesaid acts of the legislature of Minnesota, and of the said agreement, are entitled to the full, complete and exclusive ownership and control of all and every the rights, franchises, privileges, hereditaments and powers of the said railway company, applicable or in anywise appertaining to, or which may be hereafter applicable or pertain to the said portion of the said railroad above mentioned, with power among other things to organize a corporation with all the corporate powers, privileges and franchises of the said Minneapolis & St. Louis Railway Company, for the construction, use, management and enjoyment of the same.

And, whereas, the said Henry T. Welles and W. D. Washburn have assigned certain shares of the said special stock to the other parties hereto with a view to the organization of a corporation under and by virtue of the said acts of the legislature of the said State, and in pursuance of the aforesaid agreement, and for the purposes therein expressed.

Now, therefore, these presents witness, that the said Henry T. Welles, W. D. Washburn, William G. Moorhead, Samuel M. Felton
and Frank H. Clark (being the holders of the said two
138 thousand shares of special stock), in consideration of the premises and for the purpose of carrying into effect the aforesaid agreement in relation thereto, according to the true intent and meaning of the said agreement, have associated and do, hereby associate in a corporate capacity, under the corporate name or title of "The Minneapolis & Duluth Railroad Company," and by the said title do, as a corporation, and not individually, assume all the corporate rights and liabilities of the said Minneapolis & St. Louis Railway Company, in respect to all that portion of the railroad authorized to be constructed by the charter of the said company, described as follows, to wit: Beginning at or near the junction depot of the First division of the St. Paul & Pacific Railroad Company in St. Anthony and running thence in a northeasterly direction to a point of junction with the Lake Superior & Mississippi railroad at or near White Bear lake, in Ramsey county, State of Minnesota, a distance of thirteen miles, more or less. And the said parties hereto agree as follows, to wit:

First. That the affairs of the said company shall be managed by a board of directors consisting of five stockholders in the said company, to be elected by the stockholders annually, as prescribed by the charter of the Minneapolis & St. *St.* Louis Railroad Company. And until the annual meeting next succeeding the date of these articles, the following-named persons shall be the directors to wit:

Frank H. Clark, Henry T. Welles, W. D. Washburn, William G. Moorhead and Samuel M. Felton.

139 The directors shall elect one of their number as president of the company, and shall appoint a secretary, treasurer and such engineers and other officers as they may find necessary, and shall fix their compensation.

Second. The said two thousand shares of special stock held by the several parties hereto shall be the capital stock of this company, and shall be transferrable only on the books of this company, and when transfers are made and new certificates issued such new certificates shall be issued in the name of this company.

Third. The directors shall have power to borrow for the corporate purposes of the company, any sum of money not exceeding four hundred thousand dollars, to be used in the construction and equipment of the said railroad, and any branches or extensions which the company may be authorized to make, and for the said purpose they may issue bonds under the corporate seal bearing interest at the rate of seven per cent. per annum, payable semi-annually, and secure the payment thereof by mortgage of the said railroad to be constructed together with its franchises, and any part of the property of the company now in possession or hereafter acquired, and they shall have power at any time to contract with any other railroad company or companies of this State in relation to any matters or things touching the construction of the said railroad and appendages and the running of cars and locomotives thereon, and the leasing for any term of years of the whole or any part of the railroad and franchises of this company, to any other railroad company of the State of Minnesota, on such terms as they may agree upon.

140 In witness whereof, the said parties have hereunto set their hands and seals respectively, the day and year first above written.

WM. G. MOORHEAD.	[SEAL.]
S. M. FELTON.	[SEAL.]
FRANK H. CLARK.	[SEAL.]
WILLIAM D. WASHBURN.	[SEAL.]
HENRY T. WELLES.	[SEAL.]

Signed, sealed and delivered in the presence of us by Wm. G. Moorhead, Sam'l M. Felton, Frank H. Clark and Wm. D. Washburn:

W. S. ALEXANDER.
CHAS. S. HINCHMAN.

And by Henry T. Welles in the presence of—
IRA JOHNSON.
SAMUEL BUNDOCK.

[Internal-revenue stamp, 25 cents, cancelled.]
[Internal-revenue stamp, 10 cents, cancelled.]

EXHIBIT "3."

Articles of Incorporation of the Minnesota & Iowa Southern Railway.

Filed in the office of the secretary of state, July 13, 1885, and in office of recorder of Winnebago county, May 5, 1878.

Art. 1. Know all men by these presents: That David Secor,
141 Mikkel Peterson, J. Thompson, W. Larson, C. D. Smith, S. D. Wadsworth, J. M. Hull, J. W. Mahoney and S. G. Honsey hereby form a corporation under the name and style of the Minnesota & Iowa Southern Railway Company, for the purpose of constructing, operating and maintaining a railroad from a point on the Minnesota State line at or near range twenty-three west of the 5th principal meridian, and running across the county of Winnebago, in the State of Iowa, to the intersection of some line or lines of railroad running in a southerly direction.

Art. 2. The corporation shall commence on the 1st day of May, A. D. 1878, and continue for fifty years, with the right of renewal and perpetual succession.

Art. 3. The principal place of business of said company shall be at Forest City, Iowa, and stockholders' meetings and meetings of the board of directors shall be held there.

Art. 4. The board of directors of said corporation shall have power to transfer or lease the said road to be constructed to any other railroad company, or to consolidate the stock with such other company, if in the opinion of the directors a better and longer line of road can be secured by such transfer, lease or consolidation.

Art. 5. The capital stock of said company may be three millions of dollars ($3,000,000), divided into shares of one hundred dollars each, and at all stockholders' meetings each share of stock shall be entitled to one vote. The stock may be subscribed for at such times and in such amounts as the board of directors may from time to time determine. The times and conditions on which it is
142 to be paid in shall also be determined by the board of directors.

Art. 6. The greatest amount of indebtedness which the company may have at any one time shall not exceed two-thirds of the capital stock.

Art. 7. The affairs of the company shall be managed by a board of nine directors, who shall continue to be directors until the first Monday in June, one thousand eight hundred and seventy-nine, when the stockholders shall hold their first annual meeting for the election of directors, and annually thereafter the election of directors shall be held on the first Monday in June. It is provided, how-

ever, that David Secor, Mikkel Peterson, J. Thompson, W. Larson C. D. Smith, S. D. Wadsworth, J. M. Hull, J. W. Mahoney and S. G Honsey shall constitute the first board of directors for the purpose of organizing the company, procuring right of way, locating line of road and procuring such rights and property as may be deemed necessary for the company.

Art. 9. The private property of the officers or members of the company shall not be liable for the company's debts.

Art. 10. The board of directors shall have power to fill any vacancy that may at any time exist in their body until their successors are duly elected.

Art. 11. The officers of the company shall consist of a president vice-president, treasurer and secretary, and of such other officers as the board of directors shall deem expedient, all of whom shall be elected by the directors.

143 Art. 12. The following persons are the officers of this company:

David Secor, president.
J. Thompson, vice-president.
Wm. Larson, treasurer.
J. W. Mahoney, secretary.

Art. 13. The board of directors shall have full power and authority to authorize the president and secretary to execute a mortgage or deed of trust on the whole or any part of the property of the company to secure the payment of the bonds of the company, in such amounts and upon such terms and conditions as the directors may think best. The said directors may prescribe the manner in which the company's railway may be used, may regulate the operating and running of trains, may regulate fares and rates of toll or tariffs for the transportation of property and passengers over the company's railway.

Art. 14. All certificates of stock, contracts, agreements and bonds shall be signed by the president and secretary.

DAVID SECOR.
MIKKEL PETERSON.
J. THOMPSON.
WM. LARSON.
C. D. SMITH.
S. D. WADSWORTH.
J. M. HULL.
J. W. MAHONEY.
S. G. HONSEY.

(Duly acknowledged.)

144 EXHIBIT "4."

Articles of Incorporation of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company.

Art. I. Adolphus Jenkins, Esterville, Emmet Co.; Mathew Richmond, Armstrong Grove, Emmet Co.; W. H. Shea, Emmetsburg, Iowa; J. Van Meter, Dakota, Iowa; Charles B. Richards, Fort Dodge, Iowa; George R. Pearsons, Fort Dodge, Iowa; E. S. Ormsby, Emmetsburg, Iowa; M. E. L. Shanks, Fairmont, Minn.; Daniel Alton, Tenhassen, Minn.; Parsley Finch, Humboldt, Iowa; Walter H. Brown, Emmet Co., Iowa, and associates, form themselves into a corporation under the name and style of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company, with full power under said corporate name to sue and to be sued, to acquire and dispose of property, real and personal, and to do all other acts which a railroad and telegraph company in the State of Iowa may lawfully do.

Art. II. The object of said corporation is to construct, operate and maintain a railroad and telegraph line from a point in Webster or Hamilton county, Iowa, to the north line of the State of Iowa, in Kossuth or Emmet county, Iowa, to connect with a railroad and telegraph running in the direction of Fort Ridgely, in Minnesota.

Art. III. This corporation shall commence on the third day of July, eighteen hundred and seventy-six (1876), and continue fifty (50) years, with right of renewal.

145 Art. IV. The capital stock shall be two million ($2,000,000) dollars, in shares of one hundred dollars ($100) each, to be called in at the rate of not exceeding ten (10) per cent. monthly, as the board of directors may direct, and the indebtedness shall not at any time exceed one million dollars ($1,000,000) in the aggregate.

Art. V. The affairs of the company shall be managed by eleven (11) directors, who shall be stockholders, and be elected annually on the first Tuesday in January by the stockholders in person or by proxy. The first election to be held on the first Tuesday in January, eighteen hundred and seventy-nine (1879), to which time the corporators named shall constitute the board of directors, and hold their offices until said time, and any vacancy can be filled by the directors, or the directors remaining in said board, and a majority in person shall constitute a quorum for the transaction of any business for the company.

Art. VI. The board of directors shall elect from their number a president, who shall have such powers as may be given by law, and fixed in the by-laws, and they shall appoint a secretary, treasurer and such other officers and agents as they may deem necessary, all under the control of the said board, and they may require each officer or agent to give security for the faithful performance of his duty.

Art. VII. The private property of the stockholders shall be exempt from the payment of corporate debts.

Art. VIII. The principal place of business shall be in Fort Dodge, Webster county, Iowa.

Signed this fourteenth day of July, A. D. eighteen hundred and seventy-six (1876).

146

MATHEW RICHMOND,
Armstrong Grove, Emmet Co.
ADOLPHUS JENKINS,
Esterville, Emmet Co.
W. H. SHEA, *Palo Alto Co.*
I. VAN METER, *Humboldt Co.*
CHARLES B. RICHARDS,
Fort Dodge, Iowa.
GEORGE R. PEARSON,
Fort Dodge, Iowa.
E. S. ORMSBY, *Emmetsburg, Ia.*
M. E. L. SHANKS,
Fairmont, Minn.
DANIEL ALTON,
Tenhassen, Minn.
PARLEY FINCH, *Humboldt, Ia.*
WALTER H. BROWN,
Emmet Co., Iowa.

STATE OF IOWA, *Webster County,* } ss:

Filed for record July 15th, 1876, at 4 o'clock p. m., and duly recorded in Book N 1 of Miscellaneous Records, pages 58 and 59.

JARED FULLER, *Recorder.*

STATE OF IOWA:

Filed for record July 22d, 1876.

JOSIAH T. YOUNG,
Secretary of State.

Fort Dodge & Fort Ridgely Railroad and Telegraph Company.

Resolutions of the board of directors of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company, ordering change in articles of incorporation by changing name of company, and calling a meeting of the stockholders to assent to such change, as provided by section 1273 of the Code of 1873.

At a meeting of the board of directors of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company, held at the office
147 of the said company in the city of Fort Dodge, Iowa, on the 23d day of November, A. D. 1878, the following resolution was unanimously adopted, to wit:

Resolved, That the name of this company be changed by striking out of the articles of incorporation the words "and telegraph," so as the name of the company will read, Fort Dodge & Fort Ridgely Railroad Company, and that the articles of incorporation be so changed, and the secretary shall give notice of a meeting of the

stockholders, as provided by the by-laws, to be held on the 27th day of November, A. D. 1878, at 2 o'clock p. m. of said day, at the office of John F. Duncombe, in the city of Fort Dodge, Iowa, for the purpose of assenting to or rejecting said change, as provided by section 1273 of the Code of 1873.

I hereby certify that the above and foregoing is a true and correct copy of an order of the board of directors of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company which passed unanimously November 23d, A. D. 1878, as witness my hand and the seal of the company this 27th day of November, A. D. 1878.

[CORPORATE SEAL.] GUS. T. PETERSON, *Secretary.*

Stockholders' meeting of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company, held November 27th, A. D. 1878.

The stockholders of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company met at the office of John F. Duncombe, in the city of Fort Dodge, Iowa, on the 27th day of November, A. D.
148 1878, pursuant to the call of the vice-president (in the absence of the president), of which all the stockholders were notified by personal service of notice in writing that a meeting would be held on said 27th day of November, A. D. 1878, at 2 o'clock p. m.

Meeting called to order by John F. Duncombe. On motion Geo. W. Bassett was elected chairman and Gus. T. Peterson was elected secretary. The following motion was then made, to wit: Moved that a vote be taken by stocks on the question of changing the name of this company by striking out the words, "and telegraph," so that the name will read Fort Dodge & Fort Ridgely Railroad Company.

And said motion having been duly seconded was put by the chairman, and the secretary called the following-named stockholders, who voted as follows on said motion, viz:

A. McBane,	3	shares,	yea.
Wm. M. Grant,	3	"	"
Geo. R. Pearsons,	7	"	"
Isaac Garmoe,	5	"	"
J. M. Mulroney,	2	"	"
Geo. W. Bassett,	5	"	"
E. E. Prusia,	5	"	"

Absent: L. Blanden, 1 share, and C. Rank, 1 share.

All the stockholders where present except the two shares above named, and more than two-thirds of the stockholders in number and amount having voted for said change the said motion was declared carried and the said change duly ordered and the sec-
149 retary authorized to make publication thereof and prepare the necessary papers, etc., to be filed for record in the office of recorder of deeds, of Webster county and in the office of the secretary of state of the State of Iowa.

I hereby certify that the above and foregoing is a true and correct copy of resolution of the stockholders of the Fort Dodge & Fort

Ridgely Railroad and Telegraph Company, passed unanimously November 27th, 1878, as witness my hand and seal of the company at my office, in the city of Fort Dodge, Iowa. This 27th day of November, A. D. 1878.

[CORPORATE SEAL.] GUS. T. PETERSON, *Secretary.*

In witness whereof, the vice-president, in the absence of the president, and the secretary of the said Fort Dodge & Fort Ridgely Railroad and Telegraph Company, have hereunto set their names and affixed the seal of the said company, at the city of Fort Dodge, Iowa, this 27th day of November, A. D. 1878, by order of the board of directors.

[CORPORATE SEAL.] GEO. W. BASSETT, *Vice-President.*
GUS. T. PETERSON, *Secretary.*

STATE OF IOWA, } ss:
Webster County, }

On this 27th day of November, A. D., 1878, before me, the undersigned, a notary public in and for said county and State, personally appeared Geo. W. Bassett, vice-president, and Gus. T. Peterson, secretary of the Fort Dodge & Fort Ridgely Railroad and
150 Telegraph Company, to me personally known to be the identical persons whose names are affixed to the above instrument as vice-president and secretary, and severally acknowledged the same, and that they executed the foregoing instrument on behalf of the said railroad company and by order of its board of directors and for the purposes set forth, and that the same is the voluntary act of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company, by them as officers thereunto appointed, voluntarily done and executed the day and year last above written.

As witness my hand and notarial seal this day.

[SEAL.] LEON VINCENT,
Notary Public, Webster Co., Iowa.

Affidavit showing assent of more than two-thirds of the stockholders to the change of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company to the Fort Dodge & Fort Ridgely Railroad Company.

STATE OF IOWA, } ss:
Webster County, }

I, George W. Bassett, vice-president of said company, acting president in the absence of the president, and Gus. T. Peterson, secretary, being first duly sworn on oath, do depose and say, that at a meeting of the stockholders of the Fort Dodge & Fort Ridgely Railroad and Telegraph Company held at their office in Fort Dodge, Iowa, on the 27th day of November, A. D. 1878, at 2 o'clock p. m., the name of the said railroad and telegraph company was changed by
151 striking out the words "and telegraph" therefrom making the said name Fort Dodge & Fort Ridgely Railroad Company

and that over two-thirds of the stockholders were present and over two-thirds of the stockholders both in person and in value assented to such change and adopted the new name.

GEO. W. BASSETT.
GUS. T. PETERSON.

Sworn to and subscribed before me and in my presence by Geo. W. Bassett and Gus. T. Peterson, severally on this 27th day of November, A. D. 1878, as witness my hand and official seal the day and year last above written.

LEON VINCENT,
[SEAL.] *Notary Public, Webster Co., Iowa.*

STATE OF IOWA, }
Webster County, } ss:

Filed for record Nov. 29th, 1878, at 4.20 o'clock p. m., and recorded in Book No. One of Miscellaneous Records, pages 129, 130, 131.

JARED FULLER, *Recorder.*

STATE OF IOWA, ss:

Filed for record in the office of the secretary of state, November 30th, 1878, and recorded in Book "J," pages 522, 523, 524.

JOSIAH T. YOUNG,
Secretary of State.
FLETCHER W. YOUNG, *Deputy.*

152 Fort Dodge & Fort Ridgely Railroad Company.

We, the undersigned, being all the stockholders of the Fort Dodge & Fort Ridgely Railroad Company, do hereby make the following changes, alterations and additions to the articles of incorporation of the said railroad company as existing on the 10th day of September, A. D. 1880. That article II of said articles be amended by adding thereto the following, to wit: "Also to construct, operate and maintain a railroad line from the city of Fort Dodge in Webster county, Iowa, in a southerly direction to the south line of the State of Iowa, thence in a southerly direction through the State of Missouri to a point in or near Kansas City, Missouri, with a branch line running from some point on said above-described line in said State of Iowa, to, and into the city of Council Bluffs, in said State of Iowa."

That article IV be amended as follows: By increasing the amount of capital stock of said corporation in the sum of seven millions of dollars and increasing the amount of the authorized indebtedness of said corporation in the sum of five millions of dollars, as that when amended it will read as follows, to wit:

Article IV.

The capital stock shall be nine million dollars in shares of one hundred dollars each, to be called in at the rate of not exceeding ten per cent. monthly, as the board of directors may direct, and the indebtedness shall not at any time exceed six million dollars.

Also, that the following additional articles be added to said articles of incorporation, to wit:

153 Article IX.

At any and all meetings of the stockholders of said corporations any stockholder may vote by proxy, or agent duly constituted.

Article X.

These articles may be altered, amended or changed, by additions or otherwise, by a majority in interest of the stockholders voting therefor, at any meeting of such stockholders duly called in accordance with the by-laws of the corporation.

FIRST NATIONAL BANK, FORT DODGE,
By E. D. G. MORGAN, *Cas.*
E. E. PRUSIA.
I. GARMOE.
G. R. PEARSONS.
C. RANK.
R. W. JOHNSON.
W. M. GRANT.
P. C. HUDSON.
J. L. CHEYNEY.
J. M. MULRONEY.
D. K. LINCOLN.
C. C. WASHBURN.
CHAS. J. MARTIN.
CHAS. F. HATCH.
JOHN MARTIN.
A. McBANE.
M. P. HAWKINS.
W. D. WASHBURN.
GEO. W. BASSETT.
GEO. B. REYNOLDS.
J. K. SIDLE.
GEO. L. BROWN.
WALTER H. BROWN.

(Duly acknowledged.)

WEBSTER CO., }
Iowa. }

Filed for record this 27th day of December, A. D. 1880, at 3.30 o'clock p. m., and recorded in Book No. 1 of Miscellaneous Records on pages 215–216 inclusive.

C. ARNOLD, *Recorder.*

(Title of Action.)

Stipulation of Submission.

154 It is hereby stipulated and agreed by and between said plaintiff and said individual defendants above named that have appeared herein, to wit: William Strauss, William L.

Bull, Richard B. Hartshorne and Edwin Hawley, that the trial or hearing in the above-entitled action, that is about to occur before said court above named, now being set for November 13th, 1896, shall be confined to the issues joined between said plaintiff and the individual defendants above named, relative to the alleged individual liability of said defendants, or any of them, for the demand of said plaintiff, and that the trial and determination of the other issues involved in said action shall, without prejudice, await the determination of the issue of individual liability to be submitted as aforesaid; that upon the trial or hearing about to be had as aforesaid, counsel for plaintiff shall move for judgment against said individual defendants that have appeared herein, and each of them; and if, under the pleadings and stipulation between parties filed herein, it shall be determined that a liability exists upon the part of any of said individual defendants that have appeared as aforesaid to satisfy plaintiff's said demand, or any part thereof, said court shall order judgment against said defendants that have appeared as aforesaid, jointly and severally, for the whole amount due upon plaintiff's said demand, without any reference to determine or any other or further determination of the amount for which said defendants are respectively liable; and counsel for defendants shall move to dismiss said action as to said individual defendants; and if it be determined that no liability upon the part of any of said individual defendants to satisfy plaintiff's said demand ex-
155 ists, said court shall enter an order dismissing said action as to said individual defendants, but not otherwise.

The intention of this stipulation is that a hearing shall occur herein, whereupon a determination shall be had as to whether a liability now exists upon the part of any of said individual defendants that have appeared herein to satisfy plaintiff's said demand, or any part thereof. That if said question is determined affirmatively, an order for judgment shall be made against said individual defendants that have appeared herein, jointly and severally, for the full amount of plaintiff's said demand. That if said question is determined in the negative, said action shall, as to the individual defendants that are parties to this said action, be dismissed. But that, in either case, the right to move for a new trial and to appeal to the supreme court from any appealable decision of this court, shall be reserved to every party hereto.

F. W. M. CUTCHEON,
Attorney for Plaintiff.
ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for Defendants William Strauss, William L. Bull, Richard B. Hartshorne, and Edwin Hawley.

(Filed Nov. 19, 1896.)

C. N. DICKEY, *Clerk,*
By H. J. ALTNOW, *Deputy.*

156 These findings of fact seem to be correct and I consent thereto.

ALBERT E. CLARKE,
Of Defendant-' Counsel.

Findings of Fact and Conclusions of Law.

This cause, so far as concerns the issues joined between the plaintiff and the individual defendants above named that have appeared herein, relative to the individual liability of said defendants, or any of them, for the debts of said Minneapolis & St. Louis Railway Company, and particularly to satisfy the demand of the plaintiff herein, upon the facts appearing herein, came on to be tried at the September, 1896, general term of this court, and was tried before the undersigned judge of said court without a jury, and, by stipulation between the counsel, upon the pleadings and agreed statements of facts, contained in two stipulations between the parties, dated November 10th, 1896, and November 18th, 1896, respectively, and filed in this action, no other evidence being offered upon behalf of any party, the plaintiff appearing by his counsel, F. W. M. Cutcheon, Esq., and the defendants, The Minneapolis & St. Louis Railway Company, William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, by their counsel, Albert E. Clarke, Esq., and W. F. Booth, Esq., and after examining the proofs and hearing arguments of counsel, I do find the facts herein to be as follows:

157 The defendant, The Minneapolis & St. Louis Railway Company, is a domestic railroad corporation of this State.

During the year 1853, by an act of the legislature of the Territory of Minnesota, approved March 3d, 1853, entitled, "An act to incorporate the Minnesota Western Railroad Company," there was incorporated the Minnesota Western Railroad Company, which continued to be known by said name until on or about the 26th day of May, A. D. 1870, on which day its board of directors, by resolution duly adopted, and proceeding under the authority conferred by an act approved February 4th, 1870, amendatory of said original act, and entitled "An act to amend an act to incorporate the Minnesota Western Railroad Company," lawfully changed the name of said corporation to the Minneapolis & St. Louis Railway Company, by which name it was thereafter lawfully and commonly known. On or about the 20th day of April, 1881, said corporation, proceeding in accordance with the provisions of another act of the legislature of the State of Minnesota, approved March 2d, 1881, and entitled "An act to amend an act entitled 'An act to incorporate the Minnesota Western Railroad Company,' approved March third (3d), one thousand eight hundred and fifty-three (1853), and the act amendatory thereof, approved February fourth (4th), eighteen hundred and seventy (1870," did duly enter into an agreement (called "articles of consolidation") with certain other corporations, to wit: the Minneapolis & Duluth Railroad Company, the Minnesota & Iowa Southern Railroad Company, and the Fort Dodge & Fort

Ridgely Railroad Company, by and under the terms of which all said corporations above mentioned agreed to make a full and
158 complete consolidation and amalgamation of all said corporations and their respective stocks, franchises, property, earnings and management in accordance with the provisions of said act of March 2d, 1881, under the name of the Minneapolis & St. Louis Railway Company, which said agreement was and did take effect June 1st, 1881. Thereafter said contracting companies filed their said articles of consolidation as provided by said act of the legislature of Minnesota of March 2d, 1881, a true copy of which said agreement and articles of consolidation is attached to the amended complaint of the plaintiff herein, and is hereby referred to. Thereafter and on or about said June 1st, 1881, said consolidation was duly consummated, each of said constituent companies conveying and transferring unto said consolidated corporation their respective stocks, franchises, rights, property and earnings, in accordance with the provisions of said act of March 2d, 1881. Thereafter said consolidated company, thus constituted, entered upon, and ever after until the 2d day of November, 1894, enjoyed the franchises, rights, property and earnings of its said constituent corporations conveyed as aforesaid. Said consolidated corporation is the defendant corporation, The Minneapolis & St. Louis Railway Company above named.

The Minneapolis & St. Louis Railway Company referred to in the consolidation agreement above mentioned as one of the contracting corporations, parties thereto, was that certain railroad corporation, of the State of Minnesota, incorporated as above stated, under the name of the Minnesota Western Railroad Company. The
159 Minneapolis & Duluth Railroad Company, party to said consolidation agreement, was an organization created under an agreement, a true copy of which is attached to the stipulation of facts filed herein and dated November 18th, 1896. The line of road constructed by said Minneapolis & Duluth Railroad Company was one of the lines of road which the Minnesota Western Railroad Company was authorized to build, and was built under an agreement, a true copy of which is attached to said stipulation of November 18th, 1896.

The other two constituent companies, parties to said consolidation agreement, viz., the Fort Dodge & Fort Ridgely Railroad Company and the Minnesota & Iowa Southern Railroad Company, were at and previous to the execution of said consolidation agreement, railroad corporations of the State of Iowa. True copies of the articles of incorporation of said two last-named railroad companies are attached to said stipulation of November 18, 1896.

At the time of the incorporation of said two last-named railroad companies in the State of Iowa, the law of said State of Iowa authorized the incorporators of railroad companies to exempt themselves from personal liability for the corporate debts by embodying in the articles of incorporation an article or provision declaring said exemption.

Said defendant corporation, The Minneapolis & St. Louis Railway

Company, was invested by said acts above mentioned and the laws and statutes of said Territory and State of Minnesota, with
160 the usual and general powers of a body corporate, and especially was empowered to construct, maintain and operate a railroad with a single or double track from Stillwater, on Lake St. Croix, to the city of St. Anthony, on the Mississippi river, both in Minnesota, and thence across said river to the city of Minneapolis, in said State, to a convenient point of junction with the Mississippi Valley railroad or the Hastings & Dakota railroad, or both, besides eight branches.

Said Minneapolis & St. Louis Railway Company did not, nor did its constituent company, known first as the Minnesota Western Railroad Company and afterwards as the Minneapolis & St. Louis Railway Company, take any steps toward constructing or acquiring any line of railway until after the 6th day of March, 1869.

The actual construction of a line of railway by the Minneapolis & St. Louis Railway (Minnesota Western) Company was commenced during the summer and fall of 1870, since which time said company, or the said consolidated company, has at all times operated and maintained a line of railway in the State of Minnesota.

On and prior to the 28th day of June, A. D. 1888, said defendant, The Minneapolis & St. Louis Railway Company, owned and operated a system of railroads in the States of Minnesota and Iowa, extending from Minneapolis through Hopkins, Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, in the State of Iowa, with a branch line from Hopkins, via Winthrop, Minnesota, to Morton, in said last-named State. Said railway
161 company also owned a line of railway extending from Minneapolis to White Bear, in the State of Minnesota, which was leased to and operated by the St. Paul & Duluth Railroad Company.

On said day last mentioned, said defendant railway had executed three (3) mortgages, securing bonds there-fore issued and varying in amount, which said mortgages, and six others, were liens upon different portions of said lines of railway. Said three mortgages were the following:

1. A mortgage executed by said defendant, The Minneapolis & St. Louis Railway Company, to the Central Trust Company of New York City, commonly called the Pacific Extension mortgage, dated June 1st, 1881, securing outstanding bonds of the aggregate par value of one million three hundred and eighty-two thousand dollars ($1,382,000), together with interest thereon at the rate of six (6) per cent. per annum, which said mortgage was and still is a lien upon those portions of the railway of said defendant, Minneapolis & St. Louis Railway Company, extending from Minneapolis to Hopkins, Minnesota, and from Hopkins, Minnesota, to Morton, Minnesota.

2. Another mortgage executed by said defendant, The Minneapolis & St. Louis Railway Company, to said Central Trust Company of New York City, commonly called the consolidated mortgage, dated January 2d, 1882, securing outstanding bonds of the aggregate par value of one hundred and eight thousand dollars ($108,000),

together with interest thereon at the rate of six (6) per cent.
162 per annum, which said mortgage was and still is a lien upon those portions of the railway of said defendant, Minneapolis & St. Louis Railway Company extending from Minneapolis to White Bear, in Minnesota, and from Minneapolis, via Merriam junction, to Albert Lea, Minnesota, and from the southern boundary of the State of Minnesota, via Fort Dodge, Iowa, to Angus, Iowa, and from Hopkins, Minnesota, to Morton, Minnesota.

3. Another mortgage executed by said Minneapolis & St. Louis Railway Company to said Central Trust Company of New York City, commonly called the improvement and equipment mortgage, dated October 12th, 1882, securing outstanding bonds of the aggregate par value of three million eight hundred and eighty-seven thousand dollars ($3,887,000), together with interest thereon at the rate of six per cent. per annum, which said mortgage was a lien upon those portions of the railway of said defendant, Minneapolis & St. Louis Railway Company, extending from Minneapolis to White Bear, in Minnesota, and from Minneapolis, via Merriam junction and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, Iowa, and from Hopkins to Winthrop, Minnesota, as well as upon all, or substantially all, the equipment and movable property of said defendant, The Minneapolis & St. Louis Railway Company.

(Under the terms of the stipulation of submission herein, the court is not called upon to determine whether this improvement and equipment mortgage covered that portion of the railway of said defendant, The Minneapolis & St. Louis Railway Company,
163 extending from Winthrop to Morton, Minnesota. A determination of that question is not necessary to a decision of this case, and I accordingly make no finding upon that point at this time.)

Each of said mortgages, above referred to, was on said day, and (with the exception of said improvement and equipment mortgage) still is, a lien upon the portion or portions of said railway covered by it, superior in equity to the lien of any and every mortgage subsequent to it in date.

Prior to said 28th day of June, 1888, said Central Trust Company of New York was duly removed as trustee of the trust created by the mortgage above mentioned, known as the improvement and equipment mortgage, and Henry Seibert, of New York, was duly appointed trustee thereunder as its successor and in its place and stead, and forthwith entered upon the discharge of the duties of his said trust.

On said 28th day of June, 1888, said Henry Seibert, as trustee under said improvement and equipment mortgage, duly commenced an action in this said court, wherein said Seibert, as such trustee, was plaintiff, and said defendant, The Minneapolis & St. Louis Railway Company, and others were defendants, for the purpose of foreclosing said improvement and equipment mortgage, and of securing a sale in said action of all the franchises, rights, property and estates upon which the same was a lien or charge. Such

proceedings were had in said action that thereafter, and on said 28th day of June, 1888, by an order of this said court, entered in said action, a receiver was appointed in aid of such foreclos-
164 ure of all the property, railway, franchises, rights and estates of said defendants. The Minneapolis & St. Louis Railway Company, which said receiver forthwith qualified and thereupon took possession of all the property, railway, franchises, rights and estates of said railway company, and thereafter continued to hold and operate the same until the 2d day of November, A. D. 1894. Said action was not in any respect a winding-up action or a sequestration, insolvency or bankruptcy proceeding.

Thereafter such proceedings were had in said foreclosure action that on the 29th day of June, 1893, an interlocutory decree was entered in said action, whereby it was ordered and decreed that said improvement and equipment mortgage be foreclosed and that all the property, railway, franchises, rights and estates, upon which said improvement and equipment mortgage was then a lien, but none other, should be sold at judicial sale, at the time and in the manner therein provided, in case no redemption thereof should be made as therein provided. No redemption of said property, railway, franchises, rights or estates having been made, as in said decree provided, all said property, railway, rights, franchises, and estates upon which said improvement and equipment mortgage was a lien or charge, but none other, were, under and in accordance with the provisions of said interlocutory decree, offered for sale upon the 11th day of October, 1894, and then and there sold by the sheriff of Hennepin county, Minnesota, to F. P. Olcott, as chairman of a committee organized to purchase said property, and thereupon a
165 certificate of such sale was duly executed and delivered by said sheriff to said Olcott, as such chairman. Thereafter, and upon the 31st day of October, 1894, said sale was duly confirmed by this said court, and a final decree duly entered in said foreclosure action, adjudging the title to the railway, property, franchises, rights and estates so sold to be in the assignees (hereinafter referred to) of said Olcott, purchaser at said foreclosure sale.

In said foreclosure action all amounts due upon any and all the bonds and coupons secured by said improvement and equipment mortgage, and all indebtedness secured thereby, were fully paid and satisfied.

Immediately after said foreclosure sale, said F. P. Olcott, as chairman of said committee of purchasers, sold and assigned to divers persons said certificate of sale and all right, title and interest thereunder or by virtue of said sale arising, and his said assignees, pursuant to the statutes of the State of Minnesota, in such case provided, did, on or about the 2d day of November, 1894, organize and incorporate a railway company, called the Minnesota & St. Louis Railroad Company, which said The Minneapolis & St. Louis Railroad Company thereupon, as successor of said Minneapolis & St. Louis Railway Company, became invested with all the property, railway, franchises, rights, privileges, immunities and estates embraced in said improvement and equipment mortgage and sold as

aforesaid, and as such successor to said Minneapolis & St. Louis Railway Company, entered into and has ever since remained in possession of, operating and enjoying all said property, rights,
166 franchises and estates, the receiver appointed in said action then and there (that is, on or about the said 2d day of November, 1894,) delivering all of the same unto said The Minneapolis & St. Louis Railroad Company upon said 2d day of November, 1894.

At the same time that said receiver delivered said property and rights above mentioned and sold as aforesaid unto said The Minneapolis & St. Louis Railroad Company, said receiver delivered unto said railroad company, and said railroad company entered into possession of, and has ever since held, operated and enjoyed that portion of the line of railway of said defendant, The Minneapolis & St. Louis Railway Company, extending from Winthrop to Morton, in the State of Minnesota. Said railroad company is now, and ever since said 2d day of November, 1894, has been in possession of and enjoying that portion of said railway under either title or claim of title to the same by virtue of said foreclosure sale, made as above stated in said foreclosure action above mentioned. Said receiver of said Minneapolis & St. Louis Railway Company no longer has any portion of the railway, property, franchises, rights or estates of said defendant, The Minneapolis & St. Louis Railway Company, in his hands. Said receiver has, so far as the custody, care or control of any part of the estate of said Minneapolis & St. Louis Railway Company is concerned, entirely discharged his trust, and is no longer entitled to take or hold any part of said estate.

On the 27th day of December, 1887, Revilo F. Parshall in
167 an action then pending in the circuit court of the United States, for the district of Minnesota, and brought to recover damages for personal injuries suffered by said Parshall in consequence of the negligence of said defendant railway company, said court then and there having jurisdiction of all the parties and of the subject-matter of said action, wherein said Revilo F. Parshall was plaintiff and said defendant herein, Minneapolis & St. Louis Railway Company, was defendant, recovered a judgment against said defendant, Minneapolis & St. Louis Railway Company, for the sum of eight thousand seven hundred and nineteen dollars and ten cents ($8,719.10), which said judgment was then and there duly entered in said action. Upon said 27th day of December, 1887, said judgment was duly docketed in the office of the clerk of said circuit court of the United States for the district of Minnesota. Said judgment is wholly unpaid. Said judgment so entered in said action and described as aforesaid, has not been in any way reversed, modified or superseded, and there is no appeal or writ of error or other proceeding pending upon which said judgment can be reviewed, but said judgment is still in full force and effect, and is now final and conclusive.

After the rendition, entry and docketing of said judgment against said defendant, Minneapolis & St. Louis Railway Company, said defendant secured a stay of proceedings and of execution in said action wherein said Parshall was plaintiff and said railway company was

defendant, for the purpose of providing time within which to
168 have settled a bill of exceptions therein, and to make a motion therein for a new trial of said action, and thus delayed said action until after the commencement of the foreclosure action, begun as aforesaid, and the appointment of a receiver therein, so that when said stay of proceedings was vacated by the order of said United States circuit court, as it was thereafter vacated, it was impossible, and has ever since been impossible, to enforce said judgment or execution upon it or to realize thereupon, against or out of the estate of said railway company, for the reason that all the property of said defendant corporation upon which execution could have been levied was at the time of the vacation of said stay, and ever since has been, in the custody of said receiver, or in the hands of the Minneapolis & St. Louis Railroad Company.

After the entry of said judgment in favor of said Parshall and before the commencement of this action, a writ of execution in due form of law, out of and under the seal of said United States circuit court for the district of Minnesota, subscribed by the clerk of said court, and attested in the name of the Chief Justice of the Supreme Court of the United States, duly endorsed, directed and delivered to the United States marshal for said district of Minnesota, was duly issued against the property of said defendant, Minneapolis & St. Louis Railway Company, and thereafter and before the commencement of this action, and on or about the 5th day of October, A. D. 1892, was returned into said court wholly unsatisfied, and said execution is the only execution ever issued upon said judgment.
169 Said judgment does yet remain and is wholly unsatisfied and unpaid. There is now due and owing upon said judgment said sum of eight thousand seven hundred and nineteen dollars and ten cents ($8,719.10), with interest from the 27th day of December, 1887, at the rate of seven (7) per cent. per annum.

On or about the 1st day of October, 1892, said Revilo F. Parshall duly sold said judgment, together with any and all sum or sums of money or other benefit or advantage that might be had or obtained by reason of the same, unto said plaintiff, Henry A. Gardner, and then and there duly executed unto said plaintiff an assignment of said judgment duly signed, sealed and acknowledged in accordance with law, which said assignment of judgment was heretofore, and on the 18th day of October, A. D. 1895, duly filed in the office of the clerk of said United States circuit court for the district of Minnesota. Plaintiff is, and ever since said 1st day of October, A. D. 1892, has been the owner of and entitled to said judgment and all benefit or advantage to be had or obtained by reason thereof, and to enforce the same by execution or otherwise, and to prosecute any and all legal proceedings upon said judgment, and to give good and sufficient releases and discharges, as fully as might have been done by said Revilo F. Parshall while said Parshall owned and held said judgment.

Said Minneapolis & St. Louis Railway Company is wholly insolvent, and, unless it be said portion of said railway extending from

Winthrop to Morton as aforesaid, has not, and since said foreclosure sale has not had, any money or property whatsoever.

170 Said portion of said railway extending from Winthrop to Morton aforesaid, consists of road-bed, rails, yards, station grounds, station-houses, bridges, culverts and such other lands and structures only as constitute a part of the corpus of the railway of said Minneapolis & St. Louis Railway Company, and the same and all thereof are necessary in the operation of said railway.

Said Pacific Extension mortgage and said consolidated mortgage are still liens upon said portion of said railway, and said mortgages still secure, respectively, all the bonds secured by them upon said 28th day of June, 1888, and in consequence any sale of said portion of said railway upon execution, if the same could be had, would be ineffectual, inasmuch as only a nominal sum could be realized upon such sale.

At the time of and after the entry of the plaintiff's said judgment as aforesaid, and until at least November 2d, 1894, each of a large number of persons, copartnerships and corporations held shares of the capital stock of said defendant, The Minneapolis & St. Louis Railway Company. The names of many of such shareholders are to plaintiff unknown, and plaintiff has no knowledge or information as to the names of or number of shares held by any one of the persons, copartnerships or corporations that have been or are such shareholders respectively, save as hereinafter stated.

Among those who have been since prior to November 2d, 1894, and still are shareholders in defendant, The Minneapolis & St. Louis Railway Company, are the defendants above named, to wit,

171 William L. Bull, August Belmont, Edwin Hawley, Frederick P. Olcott, Richard B. Hartshorne, William A. Read, J. Kennedy Tod, and William Strauss.

Each of said shareholders above named, except Edwin Hawley, acquired all the shares of stock in said Minneapolis & St. Louis Railway Company held by him, as hereinafter stated, subsequently to April 26th, 1891. Said Hawley acquired 600 shares of his said stock November 10th, 1884, 100 shares February 4th, 1885, 300 shares June 24th, 1889, 1,100 shares July 20th, 1892.

Said individual defendants above named, since about April 26th, 1891, have held, and still hold, the number of shares of stock in said defendant, The Minneapolis & St. Louis Railway Company, next hereinafter set opposite their names respectively, which said shares are of the par value of one hundred dollars ($100) each:

William L. Bull	200	shares.
August Belmont	100	"
Edwin Hawley	2,100	"
Richard B. Hartshorne	100	"
F. P. Olcott	10,623	"
W. A. Read	4,720	"
William Strauss	2,200	"
J. Kennedy Tod	2,900	"

All said defendant shareholders who join in answer to plaintiff's amended complaint are residents of the State of New York, and have been such since a time prior to December 27th, 1897, and during all said period have been out of the State of Minnesota.

Said Henry A. Gardner and Revilo F. Parshall, his assignor, have never at any time been citizens or residents of the State of Minnesota.

172 Said Henry A. Gardner is and has been at all times since the judgment referred to in said complaint was assigned to him by said Revilo F. Parshall, a citizen and resident of the State of Illinois.

The said Revilo F. Parshall was at all times prior to his death a citizen and resident of the States of Wisconsin and Illinois, and was at the time of his death a citizen and resident of the State of Illinois.

The statutes of limitations of the State of New York are as recited in the amendment to the answer of the defendants William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, filed therein.

As conclusions of law, I find:

I.

That each of the defendants that have appeared herein, viz: William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, is liable for all the debts of said defendant, The Minneapolis & St. Louis Railway Company, to an amount not exceeding the par value of the stock held by him in said defendant corporation as above stated, and therefore, that said defendants last named are, and each of them is, liable to satisfy plaintiff's demand herein, or some part thereof.

II.

That, in consideration of the facts found as aforesaid, and of the stipulation of submission between the parties hereto filed

173 herein, plaintiff is entitled to recover from said defendants, William Strauss, William L. Bull, Richard B. Hartshorne, and Edwin Hawley, jointly and severally, the sum of eight thousand seven hundred and nineteen dollars and ten cents ($8,719.10), with interest thereon at the rate of seven (7) per cent. per annum from the 27th day of December, 1887, to the date of the entry of such judgment.

Let judgment be entered accordingly.

Dated, Minneapolis, April 6th, 1897.

HENRY C. BELDEN,
District Judge.

(Title of Action.)

SIR: Please take notice that the settled case and bill of exceptions proposed by the above-named defendants, which is herewith served upon you, together with such amendment as may be proposed by you, will be presented to the Honorable Henry C. Belden, judge of

said district court, at the court-house, in the city of Minneapolis, county of Hennepin, and State of Minnesota, on the 8th day of May, 1897, at 9 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, at a special term of said court then and there to be held, for the allowance and settlement of the proposed case and bill of exceptions, and for the certificate and signature of said judge thereto.

You will also please take notice that then and there and immediately after the allowance and settlement of said case and
174 bill of exceptions and the signature of said judge thereto, the defendants will, upon the pleadings, files and all proceedings had in said action, move the court for a new trial thereof upon the following grounds:

1. That the conclusions of law are not justified by the evidence.

2. That the conclusions of law are not justified by the findings of fact and are contrary to law.

Dated this 3d day of May, A. D. 1897.

To F. W. M. Cutcheon, Esq., attorney for plaintiff.

ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for Defendants, 1104 *Guaranty Loan Building, Minneapolis, Minn.*

The case as settled and certified consisted of the two stipulations of facts, with the exhibits attached thereto, stipulation of submission, findings of fact and conclusions of law found by the judge on the trial, and which have been heretofore set forth in folios 322 to 605 inclusive.

(Title of Action.)

Order.

The above-entitled action came before the court on a motion by the defendant for a new trial on the grounds set forth in the notice of motion.

Messrs. Albert E. Clarke and W. F. Booth appeared as at-
175 torneys for the defendant in support of the said motion, and Messrs. Flandrau, Squires & Cutcheon as attorneys for the plaintiff in opposition thereto.

Now, after hearing the arguments of counsel and considering the same together with the files and records, it is ordered that the said motion be and the same hereby is denied.

By the court:

SEAGRAVE SMITH,
CHARLES B. ELLIOTT,
DAVID F. SIMPSON, *Judges.*

February 7th, 1898.

Endorsed: Filed Feb. 8, 1898. C. N. Dickey, clerk, by H. J. Altnow, deputy.

(Title of Cause.)

Judgment, March 23d, 1898.

The above-entitled action having been regularly placed upon the calendar of the above-named court for the September, A. D. 1896, general term thereof, came on for trial before the court, without a jury, on the 19th day of November, A. D. 1896, so far as it concerned the issues joined between plaintiff and the individual defendants above named that have appeared herein, upon the pleadings and the agreed statement of facts filed herein, and the court, after hearing the evidence adduced at said trial and
176 being fully advised in the premises, did, on the 6th day of April, A. D. 1897, duly make and file its findings and order for judgment herein.

Now, pursuant to said order and on motion of F. W. M. Cutcheon, Esq., attorney for plaintiff, it is hereby adjudged that the plaintiff recover of the defendants, William Strauss, William L. Bull, Richard B. Hartshorne, and Edwin Hawley, jointly and severally, and each of them, the sum of fourteen thousand nine hundred sixty-eight and $\frac{27}{100}$ dollars, the amount ordered, and interest to date hereof, together with the sum of nineteen and $\frac{68}{100}$ dollars costs and disbursements as taxed and allowed herein, amounting in the whole to the sum of fourteen thousand nine hundred eighty-seven and $\frac{95}{100}$ dollars ($14,987.95).

By the court:

C. N. DICKEY,
Clerk of District Court,
By W. E. MACDONALD, *Deputy.*

Judgment filed and docketed March 23d, 1898.

(Title of Action.)

Notice of Appeal.

To F. *M.* M. Cutcheon, Esq., attorney for the above-named plaintiff, and to C. N. Dickey, Esq., clerk of said district court.

GENTLEMEN: Please take notice that William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, of the
177 above-named defendants, hereby appeal to the supreme court of the State of Minnesota, from that certain judgement of said district court entered herein on the 23d day of March, 1898, against said William Strauss, William L. Bull, Richard B. Hartshorne and Edwin Hawley, both severally and jointly, for the sum of fourteen thousand nine hundred eighty-seven and $\frac{95}{100}$ dollars, and from the whole of said judgment.

ALBERT E. CLARKE AND
W. F. BOOTH,
Attorneys for the Appellants Above Named.

Dated this 24th day of March, A. D. 1898.

Undertaking on appeal duly approved, served and filed.

178 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

HENRY A. GARDNER, Respondent,
vs.
MINNEAPOLIS & ST. LOUIS R'Y CO. ET AL., Defendants; Wm. Strauss *et al.*, Appellants.

11199.
No. 249. Syllabus.

The Minneapolis & St. Louis Railway Company was not the same corporation that was created by the territorial act of 1853, entitled An act to incorporate the Minnesota Western Railroad Company, but a new corporation, created and organized under Special Laws of 1881, chapter 113, and hence the stockholders were subject to the personal liability imposed by the constitution, art. 10, sec. 3.

Having accepted the benefits of the act of 1881 by organizing, issuing stock, and doing business as a corporation under it, the stockholders are estopped from asserting the unconstitutionality of the act.

Judgment affirmed.

179 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

HENRY A. GARDNER, Respondent,
vs.
MINNEAPOLIS & ST. LOUIS R'Y CO. ET AL., Defendants; Wm. Strauss *et al.*, Appellants.

11199.
No. 249. Opinion.

One of the defendants, The Minneapolis & St. Louis Railway Company, is a domestic railroad corporation and located within this State and is insolvent. The defendants who answered are William L. Bull, Richard B. Hartshorne, Edwin Hawley, and William Strauss. The plaintiff Gardner brought the action in behalf of himself, and other creditors who might intervene, against the defendants for the purpose of enforcing an alleged double liability on the part of certain stockholders, individual defendants above named, and on March 23, 1898, obtained a judgment in the district court of Hennepin county in his favor and against the above-named answering defendants for the sum of $14,987.95. The facts were all stipulated, and the appeal is from the judgment.

It appears from the record that during the year 1853 the Minnesota Western Railroad Company was incorporated by an act of the legislature of the Territory of Minnesota entitled "An act to incorporate the Minnesota Western Railroad Company, approved March 3, 1853," which railroad company continued to be known by said name until on or about the 25th day of May, 1870, when its board of directors, under authority conferred upon it by an act of the legislature approved February 4, 1870, lawfully changed the name of the corporation to the Minneapolis & St. Louis Railway Company, by which name it was thereafter commonly known.

180 On or about the 20th day of April, 1881, said corporation, proceeding under and in accordance with the provisions of another act of the legislature of the State of Minnesota, approved March 2nd, 1881, and entitled "An act to amend an act entitled 'An act to incorporate the Minnesota Western Railroad Company,' approved March third (3rd), one thousand eight hundred and fifty-three (1853), and the act amendatory thereof, approved February fourth (4th), eighteen hundred and seventy (1870)," did duly enter into an agreement with certain other corporations, to wit, the Minneapolis and Duluth Railroad Company, the Minnesota and Iowa Southern Railroad Company, and the Fort Dodge and Fort Ridgley Railroad Company, by and under the terms of which all said corporations above mentioned agreed to make a full and complete consolidation and amalgamation of all said corporations and their respective stocks, franchises, property, earnings, and management, in accordance with the provisions of said act of March 2nd, 1881, under the name of the Minneapolis & St. Louis Railway Company, which said agreement was to and did take effect June 1st, 1881. Thereafter said companies filed their said articles of consolidation as provided by said act of the legislature of Minnesota of March 2nd, 1881, and on or about said June 1st, 1881, said consolidation was duly consummated, each of said constituent companies in form conveying and transferring unto said consolidated corporation their respective stocks, franchises, rights, property, and earnings in accordance with the provisions of said act of March 2nd, 1881. Thereafter said consolidated company entered upon and ever after until the 2nd day of November, 1894, enjoyed the franchises, rights, property, and earnings of its said constituent corporations conveyed as aforesaid. Said consolidated corporation is the defendant corporation, The Minneapolis & St. Louis Railway Company, above named.

181 Said defendant corporation, The Minneapolis & St. Louis Railway Company, was invested by said acts above mentioned and the laws and statutes of said Territory and State of Minnesota with the usual and general powers of a body incorporate, and especially was empowered to construct, maintain, and operate a railroad, with a single or double track, from Stillwater, on Lake St. Croix, to the city of St. Anthony, on the Mississippi river, both in Minnesota, and thence across said river to the city of Minneapolis, in said State, to a convenient point of junction with the Mississippi Valley railroad or the Hastings & Dakota railroad, or both, besides eight branches.

On and prior to the 28th day of June, A. D. 1888, said defendant, The Minneapolis & St. Louis Railway Company, owned and operated a system of railroads in the States of Minnesota and Iowa extending from Minneapolis through Hopkins, Merriam junction, and Albert Lea, Minnesota, and Fort Dodge, Iowa, to Angus, in the State of Iowa, with a branch line from Hopkins, via Winthrop, Minnesota, to Morton, in said last-named State. Said railway company also owned a line of railway extending from Minneapolis to

White Bear, in the State of Minnesota, which was leased to and operated by the St. Paul & Duluth Railroad Company.

On said day last mentioned said defendant railway had executed three (3) mortgages securing bonds theretofore issued and varying in amount, which said mortgages and six others were liens upon different portions of said lines of railway.

The mortgages amounted in the aggregate to several millions of dollars, and in addition to said mortgages above described and mentioned, there existed upon said 28th day of June, 1888, a number of contracts of various kinds, to wit, construction contracts, traffic agreements, trackage agreements, leases, etc., which upon said day constituted liens upon the lines of said defendant, The Minneapolis & St. Louis Railway Company.

182 Subsequently this railroad became insolvent, and a receiver thereof was duly appointed on the 28th day of June, 1888, who took possession of all the property, railway, franchises, rights, and estates of said railroad company and continued the certain foreclosure proceedings against said company which had previously been commenced, and thereafter such proceedings were had in said foreclosure action that on the 29th day of June, 1893, an interlocutory decree was entered in said action, whereby it was ordered and decreed that said improvement and equipment mortgage be foreclosed, and that all the property, railway, franchises, rights, and estates upon which said improvement and equipment mortgage was then a lien, but none other, should be sold at judicial sale, at the time and in the manner therein provided, in case no redemption thereof should be made as therein provided. No redemption of said property, railway, franchises, rights, or estates having been made as in said decree provided, all said property, railway, rights, franchises, and estates upon which said improvement and equipment mortgage was a lien or charge, but none other, were, under and in accordance with the provisions of said interlocutory decree, offered for sale upon the 11th day of October, 1894, and then and there sold by the sheriff of Hennepin county, Minnesota, to F. P. Olcott, as chairman of a committee organized to purchase said property, and thereupon a certificate of such sale was duly executed and delivered by said sheriff to said Olcott, as such chairman. Thereafter and upon the 31st day of October, 1894, said sale was duly confirmed by this said court and a final decree duly entered in said foreclosure action adjudging the title to the railway, property, franchises, rights, and estates so sold to be in the assignees of said Olcott, purchaser at said foreclosure sale.

In said foreclosure action all amounts due upon any and all the bonds and coupons secured by said improvement and equipment mortgage and all indebtedness secured thereby were fully

183 paid and satisfied.

Immediately after said foreclosure sale said F. P. Olcott, as chairman of said committee of purchasers, sold and assigned to divers persons said certificate of sale and all rights, title, and interest thereunder or by virtue of said sale arising, and his said assignees, pursuant to the statutes of the State of Minnesota in such

case provided, did, on or about the 2nd day of November, 18[illegible], organize and incorporate a railway company called the Minneapolis & St. Louis Railroad Company; which said Minneapolis & St. Louis Railroad Company thereupon, as successor of said Minneapolis & St. Louis Railway Company, became invested with all the property, railway, franchises, rights, privileges, immunities, and estates embraced in said improvement and equipment mortgage and sold as aforesaid, and as such successor to said Minneapolis and St. Louis Railway Company entered into and has ever since remained in possession of, operating, and enjoying all said property, rights, franchises, and estates.

On the 27th day of December, 1887, one Revilo F. Parshall, who was a citizen and resident of the State of Illinois, and never was a citizen of the State of Minnesota, in an action then pending in the circuit court of the United States for the district of Minnesota for personal injuries suffered by him in consequence of the negligence of said railway company, viz., the Minneapolis & St. Louis Railway Company, secured a judgment against said company for the sum of $8,719.10, which judgment was duly assigned to this plaintiff, who is the owner thereof, and the same is unpaid and in full force and effect. Said plaintiff has never been a resident of the State of Minnesota. By reason of a stay of execution and the appointment of a receiver of said railway company and its insolvency plaintiff has been unable to realize on said execution. Since the consolidation of said
184 several railroad companies under the name of the Minneapolis & St. Louis Railway Company it has been acting as a company and transacting a general railroad business under that name.

Between April 26, 1891, and November 2, 1894, the individual defendants held at least the number of shares in said defendant, Minneapolis & St. Louis Railway Company, next hereinafter set opposite their names respectively of the par value of $100 each, viz:

William L. Bull	200 shares.
Rachel B. Hartshorne	100 "
William Strauss	2,200 "

And Edwin Hawley acquired 600 shares of his stock November 10, 1884; 100 shares February 4, 1885; 300 shares June 24, 1889, and 1,100 shares July 20, 1892.

Upon the facts in the record it seems to us that there cannot be any serious question but that under Special Laws of 1881, ch. 113, the several railroads herein mentioned were authorized to merge and consolidate their capital, franchises, and property under the name of the Minneapolis & St. Louis Railway Company, and that as a matter of fact they did so and acted accordingly for many years. They certainly had the legal sanction of the legislature, and the essential steps necessary to effect a consolidation were taken, and whether all or any of the corporations so consolidated then had a legal existence as such cannot be contested and determined in a proceeding of this kind, but only in a direct proceeding instituted by the State.

Thompson's Commentaries on the Law of Corporations, sec. 315.

This consolidated company, duly organized as such, issued its stock and acted in the same manner as railroad companies created otherwise than by consolidation. Section eleven of the act provides that the new corporation shall possess all the powers, rights, and franchises conferred upon each of its constituent corporations,
185 and shall be subject to all the restrictions and duties imposed by the laws of this State, and section 14 of the act provides that "all the provisions of the general laws of this State in regard to railroad corporations shall be applicable to any new corporation formed by consolidation under the provisions of this act, except so far as the same shall not be applicable thereto by reason of the situation of portions of its lines without this State."

Railroad franchises are derived from the State, and where several have thus come into existence it needs but little, if any, argument to show that the power which authorized their creation may authorize their consolidation.

And a consolidation could not have been made without the consent of the shareholders. Having done this, the different branches were merged into a new corporation. "A consolidation involves the formation of a new company by the shareholders under a new constitution." Morawetz on Private Corporations, sec. 940. How can it be otherwise?

The various provisions of the several branches may be in sharp conflict, as was the case here between the exemption from double liability of the shareholders in the Iowa corporation and such liability under our constitution on the part of the Minnesota corporation. In consolidating, such corporations must necessarily yield some portions of its rights and assume other rights, powers, and obligations in the new one. The law authorizing the consolidation repeatedly refers to the corporation as a new one, and it was in this new one that the individual defendants took and held stock for which they are sued as being liable.

There can be no doubt that the general effect of the consolidation of several corporations by the shareholders into one is to create a new one. Whatever may be the liability of the
186 several corporations we need not enquire, because the liability here sought to be enforced is one against individuals who have been and are stockholders in the new corporation. It is immaterial whether they owned stock in one or more of the several corporations. They are charged with this double liability because they are found to own stock when the judgment was recovered against the new corporation, or at a time previous to the rendition of such judgment when such liability became fixed against them under the law. Nor does the mere fact that the stockholders in the Iowa corporation possessed immunities or exemptions from double liability continue that exemption if, upon coming into our State, it consolidated with a Minnesota corporation, because by its voluntary act in becoming a member of a new corporation here its rights therein would be measured by our laws, legislative and constitutional.

Assuming, therefore, that the Minneapolis & St. Louis Railway

Company was a new consolidated railroad corporation, the double liability clause of the constitution, art. 10, sec. 3, would be applicable.

Under this section each shareholder in any corporation is liable to the amount of stock held or owned by him, excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business. This constitutional provision is very broad in its language, and includes each shareholder in any corporation except those specifically mentioned. A shareholder in a railroad corporation is not one of those exempted, but is included in the general language, viz., each shareholder in any corporation. Nor is there any sound reason why this double liability should not attach to shareholders in a railroad corporation.

187 They derive their franchises from the State, which gives them vast powers of a public nature and which are frequently of great value to them, and a corresponding responsibility should attach to those carrying on the business authorized by such franchises.

Now, let us more particularly refer to the contention of the defendant's counsel that if the special law of 1881 and the acts done thereunder were attempts to create a new corporation, then they would be absolutely void, because the constitution, art. 10, sec. 2, prohibits the formation of corporations under special acts except for municipal purposes. Suppose that the corporation was never legally organized, and that steps might have been legally taken to have prevented its acting even as a *de facto* corporation, can the promoters of this scheme, who organized it and have not only carried on its business as a *de facto* corporation, but claiming it to be one *de jure*, successively enter the plea that the act of 1881 was unconstitutional, and hence all acts done under it are invalid?

Since its formation, in 1881, it has acted openly in all respects as a corporation. It has borrowed money, giving security therefor upon the property of the new corporation, to the amount of millions of dollars, which it has presumably used for its own benefit.

It has operated its road, carrying freight and passengers and receiving large sums of money therefor. It made construction, traffic, and trackage agreements and various leases, and in all of these matters it participated in the benefits derived therefrom.

To all of these things the stockholders are presumed to have consented and to have had knowledge of such transaction- and enjoyed the fruits of them.

In the case of McCarthy *v.* Lavasche, 89 Ill., 270, a suit was brought by a creditor of the corporation to enforce the indi-

188 vidual liability of a shareholder for double the amount of his shares, and a defense was interposed that the act of the legislature under which the corporation had been formed was unconstitutional; but the supreme court held that the defendant was liable, saying that the appellant — approved of the act and availed himself of its benefits by subscribing for stock and becoming entitled to exercise all the rights and privileges of a stockholder in the corporation, justice, morality, public policy, and precedent all de-

mand that the appellant should be estopped from denying the constitutionality of the law.

In Michigan it was decided that a corporation which had not been properly organized under any existing law of that State could be sued upon a note which it had executed in its corporate name.

Empire Manufacturing Co. *v.* Stuart, 46 Mich., 482.

See also Minn. Gas-light Economizer Co. *v.* Denslow, 46 Minn., 171.

And we are of the opinion that plaintiff, as a creditor of the defendant railroad company, is entitled to enforce the individual liability of the answering stockholders, and that the principle of estoppel extends so far as to prevent them from setting up the invalidity of the charter as a defense.

Other questions have been raised and discussed by the respective counsel, but a decision upon them by this court in this action is entirely unnecessary, and we express no opinion thereon.

Judgment affirmed.

BUCK, *J.*

189 [Endorsed:] No. 11199. State of Minnesota supreme court. Henry A. Gardner, respondent, *vs.* Minneapolis & St. Louis R'y Co. *et al.*, appellants. Copy of opinion and syllabus. Filed August 12, 1898. D. F. Reese, clerk. April term, A. D. 1898. Buck, J.

190 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

HENRY A. GARDNER, Respondent,
vs.
MPLS. AND ST. LOUIS R'Y CO. ET AL., Defendants; WILLIAM STRAUSS, WILLIAM L. BULL, RICHARD B. HARTSHORN, and EDWIN HAWLEY, Appellants. } No. 249.

Pursuant to an order of court duly made and entered in this cause on the 26th day of August, A. D. 1898—

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the fourth judicial district, sitting within and for the county of Hennepin, be, and the same hereby is, in all things affirmed; and it is further determined and adjudged that the respondent above named do have and recover of said William Strauss, William L. Bull, Richard B. Hartshorn, and Edwin Hawley, appellants herein, the sum and amount of one hundred and fifty dollars ($150.00), costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 26th day of August, 1898.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25 00
Clerk's fees for making return	
Printer's fees	115 00
Clerk's fees, supreme court	10 00
Filing mandate	
Affidavits and acknowledgments	
Postage	
Copying returns for printer	
	$150 00

191 [Endorsed:] 11199. State of Minnesota, supreme court. Transcript of judgment. Filed August 26, A. D. 1898. D. F. Reese, clerk. —— ——, attorney for —. Page No. —, — book.

STATE OF MINNESOTA, *Supreme Court*, } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 26th day of August, A. D. 1898.

D. F. REESE, *Clerk.*

192 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

HENRY A. GARDNER, Respondent, *vs.* MPLS. AND ST. LOUIS R'Y CO. ET AL., Defendants; Wm. Strauss, Wm. L. Bull, Richard B. Hartshorn, and Edwin Hawley, Appellants. } No. 249. Appeal from District Court, Fourth Judicial District, County of Hennepin.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1898, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered August 26, A. D. 1898.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.
Attest: D. F. REESE, *Clerk.*

193 [Endorsed:] No. 11199. State of Minnesota, supreme court. Copy of order for judgment. Filed Aug. 26, A. D. 1898. D. F. Reese, clerk. Entered on page —.

194 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1898.

Tuesday morning, 9.30 o'clock, July 12, A. D. 1898, court convened pursuant to adjournment, all the justices being present.

HENRY A. GARDNER, Respondent,
vs.
MPLS. AND ST. LOUIS R'Y CO., Defendants; WM. Strauss *et al.*, Appellants. } Cal. No., 249; Reg. No., 11199.

This cause came on to be heard this day upon the return to the appeal herein.
Thereupon the same was submitted to the court for decision upon paper book and briefs of counsel and taken under advisement.
A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.
Attest: D. F. REESE, *Clerk.*

195 [Endorsed:] 11199. State of Minnesota, supreme court. Copy of minutes of argument. Filed August 26, A. D. 1898. D. F. Reese, clerk.

196 [Endorsed:] No. 11199. State of Minnesota, supreme court. Henry A. Gardner, respondent, against Mpls. and St. Louis R'y Co., appellants. Judgment-roll. Filed August 26, 1898. D. F. Reese, clerk,

197 STATE OF MINNESOTA, *Supreme Court,* } *ss:*

I, D. F. Reese, clerk of the supreme court of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record in said court in the case of Henry A. Gardner, plaintiff and respondent, and The Minneapolis and St. Louis Railway Company, William L. Bull, August Belmont, Edwin Hawley, Richard B. Hartshorne, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, defendants and appellants, in said supreme court, including the pleadings, exhibits,

stipulations of fact, stipulations for the admission of the general and special acts of the legislature of the Territory and State of Minnesota, findings of fact and conclusions of law, judgment, judgment-roll, opinion of said supreme court in said cause, assignment of errors made and filed in said cause by the defendants and appellants, and all papers filed and proceedings had in said cause in said court.

I do further certify and return that I have annexed to said transcript and included therewith the original writ of error from the Supreme Court of the United States; the original citation issued therein, with proof of service thereon; also the original petition for the allowance of said writ of error, together with the assignment of errors, and a copy of the bond on said writ of error, and that the foregoing constitutes a full, true, and complete return to said writ of error.

I do further certify that section 3 of rule 9 of the supreme court of Minnesota is and has been at all times while said case was in said court as follows:

"Prefixed to the brief of the appellant, but stated separately, shall be the assignment of errors intended to be urged. Each specification of error shall be separately, distinctly and concisely stated, without repetition, and they shall be numbered consecutively. When the error specified is that the finding of the court below or referee is not sustained by the evidence, it shall specify particularly the finding complained of. No error not affecting the jurisdiction over the subject-matter shall be considered unless stated in the assignment of errors."

198 The assignment of errors incorporated in the foregoing record entitled "Assignment of errors made and filed by defendant and appellant in State supreme court" was duly made and filed in said State supreme court on the 11th day of June, 1898, prefixed to the brief of appellant, and stated separately in accordance with the rules of practice of said court in all things, and were a part of the record in said court upon which said cause was heard and determined.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capital, St. Paul, Minnesota, this 18th day of November, A. D. 1898.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk Supreme Court of Minnesota,
By J. L. HELM, *Deputy.*

199 In the Supreme Court of the United States.

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, WILLIAM L. Bull, Edwin Hawley, Richard B. Hartshorne, August Belmont, F. B. Olcott, W. A. Read, William Strauss, J. Kennedy Tod, and William D. Washburn, Plaintiffs in Error,

vs.

HENRY A. GARDNER, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed by and between the attorneys for the parties hereto:

1. The complete transcript of the proceedings in the State court as filed in the office of the clerk of this court shall be printed.

2. On pages 32, 33, and 35 of the Paper Book used in the supreme court of the State of Minnesota and filed in the office of the clerk of this court as a part of the transcript, the date showing the time when the consolidation agreement printed upon said pages shall go into effect is left blank; these blanks shall be filled by writing therein the words "first" and "June," so that the same shall read "after the first day of June." These blanks are found at subdivision 1, page 32, folio 126; subdivision 2, page 33, folio 129; subdivision 3, page 33, folio 130; subdivision 5, page 35, folio 139.

Before printing the record the clerk of the Supreme Court of the United States is authorized to fill in the blanks, as above stated.

3. All special legislative acts and parts of acts dealing with said plaintiff in error, The Minneapolis and St. Louis Railroad Company, or the Minnesota Western Railroad Company, under whatsoever name, shall be considered as part of the record in this cause without being printed therein, as well as all general laws and constitutional provisions of the State of Minnesota, and may be read or referred to upon the hearing of this cause.

Dated December 20, 1898.

F. W. M. CUTCHEON,
Attorney for Defendant in Error.
ALBERT E. CLARKE,
Attorney for Plaintiffs in Error.

200 [Endorsed:] File No. 17,192. Supreme Court U. S., October term, 1898. Term No., 607. The Minneapolis & St. Louis R'y Co. *et al.*, P. E., *vs.* Henry A. Gardner. Stipulation to correct transcript of record, &c. Filed Dec'r 27, 1898.

Endorsed on cover: Case No. 17,192. Minnesota supreme court. Term No., 607. The Minneapolis & St. Louis Railway Company *et al.*, plaintiffs in error, *vs.* Henry A. Gardner. Filed November 21st, 1898.